1917.

Present: Shaw J.

GOONETILLEKE *v.* ELISA *et. al.*

1,062—P. C. Kalutara, 45,352.

False petition against Sub-Inspector sent to Assistant Superintendent of Police—How charge should be framed—Penal Code, s. 180, should be sparingly exercised in the case of petitions against police officers—Interpretation of section.

Accused presented a petition to the Assistant Superintendent of Police alleging that the Sub-Inspector had failed to make any inquiries into her case, and had caned her, and had not recorded her complaint. The accused was charged under section 180 of the Penal Code, and the charge ran as follows: That No. 1 accused did "give false information to the Assistant Superintendent of Police, Kalutara, by tendering a false petition with a view to put complainant into trouble, and thereby committed an offence punishable under section 180 of the Penal Code." The Magistrate held that the allegations in the petition were false, but he acquitted the accused on the following grounds:—

(1) That as the Assistant Superintendent had no power to punish the Sub-Inspector for misconduct, but only to report the matter to the Superintendent, no charge can be sustained against the accused under section 180.

(2) The information against the Sub-Inspector being of conduct amounting to a criminal offence, no proceedings should be taken under section 180, in respect of an information with regard to it, until the criminal charge is disposed of.

Held, (1) That as to the first ground, "the matter appears to be open to some doubt," and it would be advisable to have the authorities reviewed in a proper case.

(2) The second ground of acquittal was bad. "I do not read *Kindersley v. David*[1] as meaning that no proceedings under section 180 can be taken until a criminal charge has been brought, or that the principle laid down is intended to apply to a case like the present, where no criminal case against the Sub-Inspector by the first accused is pending, and where there is obviously no intention that any such case should be brought."

Held, further, that the charge was bad, and disclosed no criminal offence.

"The provisions of section 180 should be exercised very sparingly and with great caution in the case of petitions against the police to their superior officers."

THE facts are fully set out in the judgment.

Grenier, C.C., for the appellant.

H. J. C. Pereira (with him *Weeraratne*), for the respondent.

Cur. adv. vult.

December 18, 1917. SHAW J.—

This is an appeal by the Solicitor-General from an order of the Magistrate acquitting the three accused: the first, of an offence against section 180 of the Penal Code; and the second and third, of abetment of the offence.

The first accused, who is an ordinary villager, came to the police station at Matugama on September 13 and complained to the Sub-Inspector that she had been assaulted by one Albert and others. The Sub-Inspector recorded her complaint, and sent her to the Neboda hospital for examination. The doctor reported that the woman's injuries were non-grievous, consisting of contusions and slight abrasions only, and the Sub-Inspector consequently declined to proceed with the case as a police charge, and referred the woman to the Village Tribunal. The evidence of the Assistant Superintendent of Police shows that in so doing he adopted the correct procedure.

The woman, annoyed by the refusal of the Sub-Inspector to take up her case, went away, and, with the assistance of her husband, the second accused, and of the third accused, who is another villager who seems to have some grievance against the Sub-Inspector with regard to other matters, went to a petition drawer and drew up, and subsequently sent to the Assistant Superintendent of Police, the petition that is the subject of the present case.

The petition sets out the first accused's complaint against the men whom she charges with assault, and goes on to allege that the Sub-Inspector had failed to make any inquiries into her case, and had caned her on the buttocks with the cane he had in his hand, and had not recorded her complaint.

[1] *(1908) 11 N. L. R. 371.*

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The Magistrate has found, as a fact, that the statements that the Sub-Inspector struck the woman with his cane, and that he omitted to make an entry of her complaint in the information book, are untrue, and he has also found that the third accused abetted her in presenting the petition, but he has dismissed the charge on two legal grounds. The first ground is that it appears from the evidence of the Assistant Superintendent of Police, to whom the petition was addressed, that he had no power to punish the Sub-Inspector for misconduct, but only to report the matter to the Superintendent, his superior officer, and therefore, in accordance with the ruling in *Perera v. Silva*,[1] *Plant v. Harmanis*,[2] *Kindersley v. David*,[3] and other cases, no charge can be sustained under section 180 in respect of false information given to the Assistant Superintendent.

The second ground on which the Magistrate dismissed the charge is that, the information against the Sub-Inspector being of conduct amounting to a criminal offence, the case of *Kindersley v. David*,[3] above referred to, shows that no proceedings should be taken under section 180, in respect of an information with regard to it, until the criminal charge is disposed of.

Dealing with the second ground first. I do not read *Kindersely v. David*[3] as meaning that no proceedings under section 180 can be taken until a criminal charge has been brought, or that the principle laid down is intended to apply to a case like the present, where no criminal case against the Sub-Inspector by the first accused is pending, and where there is obviously no intention that any such case should be brought.

With regard, however, to the first ground, the matter appears to be open to some doubt. The cases cited, and a series of cases on the construction of this section of the Penal Code reported in *6 Tambiah, at pages 40 et seq.*, are all single Judge decisions, and it would, in my opinion, be advisable, in a proper case for the purpose, to have them reviewed by a fuller Court, and to have the proper construction of the section definitely laid down. The section is as follows: "Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known to him, shall be punished, &c."

The Indian cases *Queen Empress v. Budh Sen*[4] and *Queen Empress v. Ganesh Khanderas*,[5] decided under the corresponding section of the Indian Penal Code, seem to show that the section aims at two

[1] *(1905) 4 A. C. Rep. 33.*
[2] *(1911) 5 Leader L. R. 111.*
[3] *(1908) 11 N. L. R. 371.*
[4] *I. L. R. 13 All 351.*
[5] *I. L. R. 13 Bom. 506.*

different offences: (1) Intending to cause, or knowing it to be likely to cause, the public servant to use his lawful power to the injury or annoyance of some person; and (2) intending to cause, or knowing it to be likely to cause, the public servant to do or omit to do anything which the public servant ought not to have done or omitted if he knew the true state of facts. The earlier Indian cases, *Queen Empress v. Golam Ahmed Kazi* [1] and *The Queen v. Periannan*,[2] appear to have held that to constitute an offence against either part of the section it was necessary to show the intention to injure or annoy some person, a construction that is not accepted in the later cases. These earlier cases are referred to, and appear to have influenced some of our local decisions.

The present case, however, does not appear to me to be a proper or convenient one in which to reconsider these decisions. In the first place, no charge appears to have been made or intended under the latter part of the section. The allegation against the accused is that the false petition was presented "with a view to put complainant into trouble," not with the intention of making the Assistant Superintendent do something which he ought not to have done had he known the true state of facts.

In the second place, the charge in the present case is entirely bad, and discloses no criminal offence, and no conviction could be properly made on it without amendment. It is as follows: That No. 1 accused did "give false information to the Assistant Superintendent of Police, Kalutara, by tendering a false petition with a view to put complainant into trouble, and thereby committed an offence punishable under section 180 of the Ceylon Penal Code."

Two essential elements of an offence under the earlier part of the section, which is the offence obviously aimed at by the charge, are omitted. First, that the accused knew or believed the information to be false; and second, that she intended to cause, or knew it was likely to cause, the Assistant Superintendent of Police to use his lawful power to the injury or annoyance of the Sub-Inspector.

Even supposing the allegations made by the woman to be false, there is nothing whatever in the evidence to show that the second and third accused knew of their falsity, as they are only shown to have been assisting her in getting the petition drawn upon her representations as to what had occurred.

There is, moreover, no satisfactory evidence, and no finding by the Magistrate, on the other essential element omitted in the charge, viz., that the woman intended the Assistant Superintendent of Police to use his lawful power, if, indeed, he had any, to the injury or annoyance of the Sub-Inspector. The object of the woman was obviously, primarily at any rate, to induce the police to take up her case against the men who had assaulted her.

[1] *I. L. R. 14 Cal. 314.* [2] *I. L. R. 4 Mad 241.*

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Although I quite agree with the remarks of the present Chief Justice in *Cookson v. Appuhamy*,[1] of the importance for the protection of the villagers themselves of punishing false and malicious petitioners, I think that the provisions of section 180 should be exercised very sparingly and with great caution in the case of petitions against the police to their superior officers, for it is much better that a Police Superintendent's time should be occasionally wasted in inquiring into an unfounded charge against one of his subordinates than that villagers should be deterred by criminal prosecutions from laying their complaints against the police, which are necessarily somewhat difficult to prove in a Court of law, before their superior officers for departmental inquiry.

I dismiss the appeal.

Appeal dismissed.