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Present: Wood Renton J.

COOKSON *v.* APPUHAMY.

451—P. C. Ratnapura, 15,881.

False information to Government Agent—"Lawful power"—Public servant—Penal Code, s. 180.

In order to support a conviction under section 180 of the Penal Code there should be proof that information which the accused knew or believed to be false was given by him to a public servant, intending thereby to cause, or knowing it to be likely that he would cause, such public servant to use his lawful power 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 the facts were known by him.

A person who preferred a false information amounting to a charge of a criminal offence to a Government Agent was held to have committed an offence under section 180.

A Government Agent is a "public servant," and is vested with "lawful power" within the meaning of section 180.

* March 1, 1912. LASCELLES C.J.—

The questions of law which are really involved in this appeal have been fully discussed by my brother Wood Renton, who was pressed by the learned Solicitor-General to give a ruling on another point, namely, whether the Crown is bound by the provisions of section 229 of the Civil Procedure Code. The question has accordingly been referred to us. When the case came on for argument, the learned counsel who represented the respondent stated that he was not aware that the case had been referred on this point, and that he was not prepared to argue the question fully. It is unnecessary to decide this point, as my brother Wood Renton has observed, for the purposes of this appeal, and I do not think that any good purpose would be served by attempting to decide a question which does not arise on the appeal, and which counsel are not prepared to argue fully.

I would remit the case for judgment as suggested in the last paragraph of my brother Wood Renton's judgment.

GRENIER J.—I agree.

The words "lawful power" mean a power which is vested in a public officer by virtue of his office; section 180 is not applicable in a case where a public officer can do no more than pass on information to another, where he is, so to speak, merely a channel for the conveyance of the information to the proper quarter. On the other hand, if a public servant is vested with special power which enables him to take independent action on the information brought before him in a petition, he possesses "lawful power" within the meaning of section 180.

THE facts are set out in the judgment.

Bawa (with him *Molamure*), for the accused, appellant.

Walter Pereira, K.C., S.-G., for the respondent.

Cur. adv. vult.

October 15, 1911. WOOD RENTON J.—

This case was argued before me first on July 21 last. I sent it back to the Police Court of Ratnapura for further evidence. The inquiry in the Police Court was completed in the end of August, but as both sides desired to have the opportunity of putting fresh arguments before me on the further evidence, it was not in my power to deal with the appeal until my return a few days ago from circuit.

The accused-appellant was charged under sections 102 and 180 of the Penal Code with having aided and abetted the presentation of a false petition by one Tena to the Government Agent of the Province of Sabaragamuwa against Mr. Robertson, Superintendent of Lanark estate, at Masimbula. Tena was convicted as principal in Police Court, Ratnapura, No. 13,710, and was sentenced to six months' rigorous imprisonment and to pay a fine of Rs. 100. That decision was affirmed by the Supreme Court in appeal. In the present case the appellant has been convicted as abettor, and has also been sentenced to six months' rigorous imprisonment and to pay a fine of Rs. 100. The case is important both as regards the position of the appellant himself and as regards the question of law which it involves. The appellant was until recently Arachchi of Masimbula, and it is obvious that to him such a sentence as the Police Magistrate has imposed is a serious matter. The case, however, derives additional importance from the nature of the charge itself. There can, in my opinion, be no difficulty as to the attitude which Courts of Law should adopt in approaching the consideration of prosecutions of this character. On the one hand, nothing ought to be done which can interfere with the *bona fide* exercise of the right to petition, and there should be no readiness to brand as intentionally false mere exaggerations or even misstatements. On the other hand, the presentation of false and malicious petitions is an offence frequently committed in this Colony, and one that causes great hardship to the persons against whom such petitions are aimed. In the present

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case the complainant happens to be a man of position. But that is a mere accident, and the maintenance and firm administration of the law enacted by section 180 of the Penal Code, while they are necessary in the interests of the whole community, are of far greater importance to the poor than to those who are well to do. People whose character is known in the district in which they reside, and who have a recognized status there, cannot be lightly attacked, and if so attacked are well able to defend themselves. On the other hand, people who are not known, whose lives are obscure, and who have no official or social position, can be made subject by false and malicious petitions to a degree of harassing which is sometimes almost intolerable. There ought to be no indisposition on the part of the Courts of Law to apply the provisions of section 180 of the Penal Code in all cases that really come within the scope of that enactment, even although the administration of the law in that sense may lay the foundation for an argument that the right to petition is being interfered with. Having said so much, I proceed to deal shortly with the facts and with the law on which the determination of the present case must depend. It is necessary, as I pointed out in my interlocutory judgment sending this case back to the Police Court for further evidence, in order to support a conviction under section 180 of the Penal Code, that there should be proof that information which the accused knew or believed to be false was given by him to a public servant, intending thereby to cause, or knowing it to be likely that he would cause, such public servant to use his lawful power 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 the facts were known by him. Where we are dealing, as in the present case, with a charge of abetment, it is necessary, of course, that the accused should be shown to have aided or instigated the commission of the substantive offence.

I propose to deal with the evidence quite briefly. There can be no doubt but that Tena preferred information amounting to charges of at least two criminal offences against the complainant, Mr. Robertson. At the trial of the present case Mr. Robertson has sworn that these charges were false. His evidence on that point stands uncontradicted. We are, therefore, in presence of false information given by Tena, and given (for on this point also there is no controversy) to a " public servant."

Whether or not Mr. Cookson, the Government Agent of Ratnapura, was vested with " lawful power, " which he could use to Mr. Robertson's prejudice within the meaning of section 180 of the Penal Code, is a question that I will consider in a moment. There can be no doubt whatever but that he was a " public servant. " The interpretation of the term " lawful power " in the section in question has been clearly settled by a series of decisions, to which it is unnecessary for me to refer in detail.

They are summarised, and, if I may venture to say so, very clearly explained by my brother Grenier in the case of *Kindersley v. David.*[1]

The law as stated by Mr. Justice Grenier in that case has been followed by his Lordship the Chief Justice in No. 548—P. C. Panadure, No. 36,504.[2] It is clear on these authorities that the words "lawful power" mean a power which is vested in a public officer by virtue of his office, and that the section is not applicable in a case where a public officer can do no more than pass on information to another where he is, so to speak, merely a channel for the conveyance of the information to the proper quarter. On the other hand, it is equally clear that if a public servant is vested with special power which enables him to take independent action on the information brought before him in a petition, he possesses "lawful power" within the meaning of section 180 of the Penal Code. As an illustration of this principle I may refer to the case of *Rex v. Arnolis*,[3] where it was held that a person who gave false information against a public servant in a petition to the Governor is guilty of an offence under section 180 of the Penal Code, since it was in the Governor's power as executive head of the Colony to initiate inquiries and proceedings which might have a direct and prejudicial effect on the position of the public servant in question, if the charge contained in the petition proved to be true.

In this connection I may mention that there is in the French Code Penal a provision analogous to section 180 of our own Penal Code, and that it was construed in the same sense by the French Courts in the early part of last century in a case in which a petition had been presented by a subordinate officer to Napoleon Bonaparte, who as head of the State had the power to set the whole machinery of executive inquiry in motion. That case is reported in the first volume either of Sirey or of Dalloz, to neither of which I have access in this Colony. Has Mr. Cookson then been shown by the evidence to have "lawful power" of the kind that I have just attempted to describe? I think that this question must be answered in the affirmative. He has said expressly that he is Government Agent in charge of the police, and that as such he is vested with police powers. Mr. Cookson's evidence on this point stands unchallenged. It is indeed, corroborated by the evidence of a Sub-Inspector, to whom he gave instructions to hold an inquiry in pursuance of Tena's petition, and who held such an inquiry at Mr. Robertson's house, assisted by police officers in uniform. Mr. Cookson adds that if he had found the charges to be well founded, he could, and would, have ordered Mr. Robertson to be prosecuted criminally. On that evidence I hold without hesitation that Mr. Cookson was invested with "lawful power" within the meaning of the section of the Penal Code, under which the present charge

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

[2] *S. C. Min., Sept. 8, 1911.*

[3] *(1908) 11 N. L. R. 265.*

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was brought. We have, therefore, proof that Tena presented to a public servant information which was false in fact, and that the public servant to whom the petition was presented had lawful power to act upon it within the meaning of section 180 of the Penal Code. The only other element to be established in order to prove the commission of the principal offence by Tena is his *mens rea*. The existence of *mens rea* is proved by the falsity of the charge, and by the evidence of Mr. Robertson that he had had no kind of dispute with Tena which could give him any pretence of a ground for preferring it. It remains only to consider whether the charge of abetment has been brought home to the accused-appellant in this case. That question must clearly be answered in the affirmative, if I am entitled to act upon the evidence of the petition-drawer at the trial of this case in the Police Court. If it were necessary to decide the point, I should be prepared to hold that, even in the evidence given by the petition-drawer in this case, there are positive statements which bring home guilt to the appellant. There is no difficulty in seeing the line that the petition-drawer was endeavouring to follow in his evidence. For some reason, into which it is unnecessary to inquire, he had determined to retract the evidence that he gave at the trial of Tena, evidence which if repeated would have shown the accused-appallent in the present case to have been the real instigator of the false petition. But the petition-drawer had also before his mind the possibility of his own conviction for perjury—a possibility which was realized in fact, in spite of his skilful attempt to give no evidence against the accused-appellant—and at the same time to keep himself out of the reach of the criminal law. But he does make positive statements, which I think amount to direct evidence, that it was the accused-appellant who gave him instructions for the very petition forming the basis of the charge. I do not propose to quote his evidence on this point, for, in my opinion, even if it be excluded, there is more than sufficient evidence to justify the appellant's conviction. It was stated by Mr. Robertson that at the very time when the petition was being drawn up he saw the accused-appellant bending over the table at which the petition-drawer was writing it. Mr. Proctor Gooneratne gives evidence to the same effect. He says that he saw the Arachchi near the petition-drawer's table "getting something done." In addition to that, we have the defence of the accused-appellant himself of which account must be taken in considering whether or not he had guilty intention. His defence was an *alibi*. He denied that he was at the Police Court of Ratnapura at all on the day in question. That *alibi* has been completely disposed of by the evidence for the prosecution, and the Korala, who, the appellant himself said, would be able to support it, was called only at the further inquiry as a witness to character. On these grounds I have no ultimate difficulty in coming to the conclusion that this conviction must be affirmed.

I have still to deal with the question of sentence. As I have already stated, to a man in the position of the accused-appellant six months' rigorous imprisonment, coupled with a fine of Rs. 100, is a punishment of exceptional severity, and I have weighed with the utmost care all the evidence of character which, at my own suggestion, the appellant had an opportunity of calling before the Court at the further inquiry. I do not feel, however, that this sentence could fairly be interfered with. The appellant is a man of position and of influence. He has aided, if he did not directly instigate (which I myself think would be the correct interpretation of the facts), an ordinary villager in preferring charges of serious criminal offences against another man. The fact that the complainant is a person of standing does not add to the gravity of the offence. The punishment of the presentation of false and malicious petitions, as I have tried to explain at the commencement of this judgment, is a matter of far greater moment to the poor than to the rich. With these observations I affirm the sentence as well as the conviction.

Appeal dismissed.