

1936

*Present : Dalton S.P.J.*SOURJAH *v.* HENDRICK.362—*P. C. Galle, 10,821.*

Stamp—Appeal by public servant—Petition of appeal requires to be stamped—Criminal Procedure Code, s. 340 (3).

A petition of appeal filed by a public servant in a criminal case must be stamped in accordance with section 340 (3) of the Criminal Procedure Code.

A PPEAL from an acquittal by the Police Magistrate of Galle.

M. F. S. Pulle, C.C., for complainant, appellant.

L. A. Rajapakse (with him J. R. Jayawardene), for accused, respondent.

Cur. adv. vult.

August 3, 1936. DALTON S.P.J.—

This is an appeal by the complainant, an Inspector of Police, Galle, against the acquittal of the accused, with the written sanction of the Attorney-General.

The accused was charged, with abetting an offence, by Mr. H. Wijenathan, Municipal Engineer, Colombo, by asking him to accept, or offering to him, an illegal gratification of Rs. 100, or half of two months' salary, in the event of the accused being appointed to a post as Sub-Inspector in the Works Department of the Colombo Municipality, for which post he was an applicant. The offence abetted is stated to be a contravention of section 158 of the Penal Code, punishable by section

¹ *L. R. 5 Ch. D. 979.*

109 of the same Code. The charge is most crudely and carelessly drawn, but no objection was raised on that ground and the accused no doubt fully understood the charge.

The accused pleaded not guilty. Four witnesses were mentioned in support of the prosecution in the complaint, but after hearing the first and principal witness, Mr. Wijenathan, who was not cross-examined, the Magistrate of his own motion held that the letter (P2) from the accused which was produced did not amount to the offer of a bribe. He therefore heard no further evidence and acquitted the accused.

The Magistrate was clearly wrong in so holding, and Counsel for the respondent (accused) has to admit he cannot support the acquittal on the ground given by the Magistrate. The evidence of Mr. Wijenathan clearly establishes the offer of an illegal gratification, as set out in the charge.

When the appeal first came before me, a preliminary objection was taken thereto on behalf of the respondent, on the ground that the petition of appeal was not stamped, as required by section 340 (3) of the Criminal Procedure Code. It is conceded that the appellant is a public servant employed by the Government of Ceylon, but it was argued by Mr. Rajapakse that there is no exception in the Ordinance to the requirement of stamping all petitions of appeal.

Crown Counsel for the appellant, in reply to the objection, argued that he had never heard of a petition of appeal by a Government servant as such being stamped, but I pointed out that there was no exception at all in the Ordinance, although section 337 (2) expressly refers to appeals by the Attorney-General. Counsel could refer me to no other provision of the law making any exception in his case. The provision for a Rs. 5 stamp on a petition of appeal would seem, from the terms of section 340, sub-sections (3), (4) and (5), to be a method designed for the purpose of putting some small check on a person launching a frivolous or worthless appeal, which check would apply equally to Government servants as to all others. The former might find, in certain circumstances, that he had to pay the fee himself and not out of public funds.

Mr. Pulle then asked me to deal with the matter in revision, arguing that the appellant had done nothing that had not been consistently done in similar previous appeals, and I gave him an opportunity of producing evidence to support his contention that, according to the past practice recognized by the Court, no petition such as this had previously been required to be stamped. The respondent was also allowed to file affidavits, if he wished to do so.

The matter then came before me again and Crown Counsel supported his application with an affidavit from the Registrar of this Court. In that affidavit Mr. Grenier sets out that since the year 1915, when he first acted as Deputy Registrar and up to date no stamps have been affixed to petitions of appeal by public servants in the employment of the Government of Ceylon under section 340 (3) to his knowledge, with one exception. He states further that the practice has been that if an appellant, not being a public servant employed by the Government of Ceylon, has not stamped his petition, the record is sent back to the Police Magistrate, or District Judge, from whom it is received, and he is