

Present: Mr. Justice Middleton.

April 25,
1910

GOODEVE *v.* MADARAN *et al.*

P. C., Hatton, A.

Granting of certificates under section 26 of Ordinance No. 13 of 1889 (amended by section 5 of Ordinance No. 9 of 1909)—No appeal lies—Criminal Procedure Code, s. 338.

No appeal lies against an order of a Magistrate granting a certificate to the effect that a labourer had quitted the service of his employer on reasonable cause.

IN this matter the Police Magistrate issued certificates to the respondents to the effect that they had quitted the service of their former employer (the appellant) on reasonable cause.

The employer appealed.

No appearance for appellant.

Bawa, for the respondents.—The appeal is out of time. The new Labour Ordinance does not provide for an appeal against an order

April 25, 1910 of this nature. Under the Criminal Procedure Code no appeal lies against an order of this kind, as this is not a "criminal case or matter." See *Gunasekera v. Jayaratna*,¹ *King v. Mack*.²

Goodeve v. Madaran

April 25, 1910. MIDDLETON J.—

This is an appeal against an order made by a Magistrate under section 26 of Ordinance No. 9 of 1909 granting to certain labourers under the Ordinance certificates to the effect that they had quitted the service of their employer on reasonable cause. It is not necessary for me to go into the facts connected with the obtainment of those certificates, as, so far as I can see, they are not material to the points raised in the case. The point raised by the learned counsel for the respondent is that no appeal lies. There is the further point taken by him that the appeal was not filed within time. As regards this last point, it seems that the Magistrate made his order on March 12, 1910, and that the appellant only filed his petition of appeal against the order on April 1, 1910. Therefore, the appeal would be out of time, even if it lay under section 338 of the Criminal Procedure Code. There is no appearance here for the appellant, and on this point taken by counsel for the respondent I think it is clear that it is right. Under the Ordinance there appears to be no general right of appeal from any order made, or any certificate granted under section 26. Under section 338 (1) of the Criminal Procedure Code it is laid down that, subject to the provisions of the last three sections, which certainly do not apply to this case, any person who shall be dissatisfied with any judgment or final order pronounced by any Police Court or District Court in a criminal case or matter to which he is a party may prefer an appeal to the Supremé Court against such judgment for any error in law or in fact. Now it seems to me clear that the order made here by the Police Magistrate was not either in a criminal case or matter. There was no criminal case or criminal matter pending at the time, and the order was not made in any such case. I had quoted to me the cases of *Gunasekera v. Jayaratna*¹ and *King v. Mack*.² In the former case it was an appeal by a surety to a bail bond. There it was held that an appeal would lie, as the proceedings which might end in the imprisonment of the surety must be considered as a criminal case or matter. In *King v. Mack* it was held that no appeal would lie from an order of the Police Magistrate under section 419, which refers to the delivery of property regarding which an offence has been committed. It is clear, therefore, I think, that on both grounds which have been put forward this appeal must fail, and it must be dismissed.

Appeal dismissed.

¹ (1905) 1. Bal. 154.

² (1905) 1. Bal. 194.