

1931

Present: Drieberg J.

DEPUTY FISCAL, MATARA v. DON CAROLIS.

197-8—P. C. Matara, 57,427.

*Joinder of charges—Giving false information to public servant—Two petitions
—Course of the same transaction—Joint offences—Criminal Procedure
Code, s. 184.*

Under section 184 of the Criminal Procedure Code two persons may be charged together with having committed several offences in the course of the same transaction, if such offences were committed by them jointly.

A PPEAL from a conviction by the Police Magistrate of Matara.

Hayley, K.C. (with him *Roberts*), for the accused, appellant.

Rajapakse for the complainant, respondent.

June 29, 1931. DRIEBERG J.—

Hinni Appu, a process server, had a summons for service on the first accused-appellant who was the first defendant in D. C. Matara, 2,903. It required the first appellant to enter appearance within seven days of service. Hinni Appu says he served it on October 7; on October 8 he swore to the service.

The first appellant says he was not served on the 7th but that on the 12th Hinni Appu asked him to accept the summons and threw it into his car: this is what he says in his petition (A). He did not give evidence at the trial. The learned Police Magistrate has held, and I think rightly that this story of service on the 12th is not true and it is clear that the first appellant has procured the assistance of the second appellant to support it.

The petition A by the first appellant is dated October 18 and addressed to the Deputy Fiscal. In it he complains of the false return and the service on the 12th.

The petition (B) of November 5 is by the second appellant and is addressed to the Assistant Government Agent. The petitioner begins by mentioning the service of a summons on October 12 by a process server who threw it into a car in which he and others were and that the person for whom the summons was intended stated that "it had not been properly served and that he would inform the Deputy Fiscal by petition and also requested the petitioner to give evidence to which he agreed".

He then goes on to say that this person petitioned and that as a result of it the Deputy Fiscal, Mr. Goonewardene, went to his employer and said that the second appellant was going to give evidence at the inquiry and he referred to him in terms of abuse. The petition B was addressed to the Assistant Government Agent in the belief that the Deputy Fiscal was a subordinate officer of his and the petitioner asked leave from him to sue the Deputy Fiscal for damages. The first appellant in his petition (A) states that the second appellant was in the car and had seen what happened. It appears to me that in the petition B the second appellant intended not only to complain of the Deputy Fiscal's conduct, but to corroborate the first appellant's complaint in petition (A). It was contended that the intention of the writer was to cause the Assistant Government Agent to act to the prejudice of the Deputy Fiscal, but he also knew that it was likely, even if he did not expressly intend it, that the Assistant Government Agent would act in the matter of his statement regarding the service of summons.

The appellants were charged together under section 180 for the false information regarding the service contained in the petitions A and B; objection was taken in the lower Court and before me that this was a misjoinder of charges and it was contended that the conviction of both appellants was bad and should be set aside.

It is clear that the appellants cannot be convicted together in respect of both petitions. A charge under section 180 will only lie against the person who gives the information. This is the view taken by the Indian Courts—see *Umrao Singh*¹ referred to in *Ratanlal on Crimes*, 10th ed., p. 367, the report of which is not available; others may be charged with aiding and abetting the offence but that has not been done here.

¹ (1909) 6 A. L. J. R., 236.

The question then is whether this charge regarded as one against the first appellant in respect of the petition A and against the second appellant in respect of petition B is regular.

Section 184 would allow the trial of the two appellants together if the offences were committed in the course of the same transaction and if further the appellants jointly committed each offence. Whether the offences were committed in the course of the same transaction is a question of fact and I am of opinion that they were so committed. In petition A the first appellant makes prominent reference to the second appellant and formally sets him down as a witness; in petition B the second appellant mentions the fact that the first appellant has said that he would petition the Deputy Fiscal and asked the second appellant to give evidence for him and that he agreed to do so. It is clear that one intention of the second appellant in P2 was to carry out his undertaking to the first appellant to support his charge that he was not served with summons on October 7. But though these are different offences committed in the course of the same transaction they were not, as I have pointed out, committed jointly and it was not possible therefore to try the two appellants together for the separate offences arising out of the information given in the two petitions.

The case against the first appellant as regards the petition A which he present is free from difficulty; the joinder of the second appellant on this part of the charge cannot possibly have prejudiced him. It is not a misjoinder of charges but of parties due to a misconception of the law regarding the parties who can be held liable for an act of this nature. It has not been proved who was functioning as Deputy Fiscal at the time the petition A was received by the Deputy Fiscal, but I can assume that at that time there was some person who held that office with the full powers attaching to it and among them disciplinary powers over the subordinate members of the office. The complaint is made by Mr. Perera who at that date, December 3, 1930, held the office of Deputy Fiscal by appointment from the Governor and also the warrant from the Fiscal and was therefore in a position to take action on the petition. In any case the lack of sanction by the Attorney-General in such a case as this is not a fatal irregularity: On the facts the case against the first appellant has been proved beyond all doubt.

I set aside the conviction of the second appellant.

I alter the conviction of the first appellant to one of giving on October 13, 1930, to the Deputy Fiscal of Matara, a public servant, information which he knew to be false intending thereby or knowing it to be likely that he would thereby cause the said Deputy Fiscal to use his lawful powers to the injury or annoyance of V. G. Hinni Appu, Fiscal's Process Server.

The sentence will remain unaltered.

Conviction varied.

