

1943

Present: **de Kretser J.**SIYADORIS *et al.*, Appellants, and TAMBY, F. S., Respondent.619-621.—*M. C. Colombo, 9,859.*

*Public Officer—Police Sergeant is a public officer within the meaning of the Village Communities Ordinance, s. 90.*

A Police Sergeant is a public officer within the meaning of section 90 of the Village Communities Ordinance.

**A** PPEAL from a conviction by the Magistrate of Colombo.

*I. A. Rajapakse*, for accused, appellants.

*J. A. P. Cherubim, C.C.*, for the complainant, respondent.

October 18, 1943. DE KRETSEK J.—

The only matter pressed on this appeal is that the offence was one triable by the Village Tribunal and that the prosecuting Police Sergeant was not a public officer within the meaning of section 90 of the Village Communities Ordinance (Cap. 198) of the Legislative Enactments. The learned Magistrate dealt with this point and arrived at the correct interpretation of the judgment delivered by me, in *de Silva v. Magistrate, Gampola*<sup>1</sup> even though he seems to have erred in reading my name aright. Mr. Rajapakse says that the point has arisen in other cases, and so I should state quite clearly that all that I was doing in that case was to consider certain sections of the Criminal Procedure Code and my observations in that case dealt with that Code and with that Code alone.

The point in that case was whether a Police Officer came within the meaning of the term "complainant" in section 199 of the Criminal Procedure Code, and I pointed out that peace officers were distinguished from public servants in that Code and that a Police Officer came within the definition of a peace officer and therefore, in a different category, apparently, from a public servant, for the purpose of that Code. The further observations with regard to the Police being considered as a "force" and not a "department" also applied only to the provisions of that Code. The Magistrate seems to have decided that as a Police Officer is a public servant within the meaning of section 19 of the Penal Code, therefore, he must be taken to be a public officer within the meaning of the Village Communities Ordinance. This is not necessarily the correct line of argument. I have not given the matter very much consideration, but at the same time, it strikes me that since a Police Vidane is described as a public servant, in the illustrations, to hold that the "public officer" of the Village Communities Ordinance is the same as the "public servant" of the Penal Code, may lead to a result which was never contemplated and could not have been contemplated by the legislature. The Village Communities Ordinance defines a Police Vidane as a "minor headman" but, unfortunately, it has not defined the term

<sup>1</sup> 44 N. L. R. 320

“public officer”. It is an Ordinance which must be popularly interpreted since it deals with a class of people who understand popular language and there is not any particular definition. The words “public officer”, in my opinion, cover a member of the Police force.

The appeal is dismissed.

*Appeal dismissed.*

---