

1945

*Present: Wijewardene J.*IN *re* SEEMAN.761—M. C., *Kaaturara*, 23,906.

Criminal Procedure Code, s. 440 (1)—Perjury by Headman—Reference to diary—Oral testimony at variance with entry in diary—Appropriate case for summary punishment.

Where a Village Headman, while giving evidence, read the entry made by him in his diary and told the court deliberately something different from what was recorded by him—

Held, that it was an appropriate case for summary punishment for perjury under section 440 (1) of the Criminal Procedure Code.

A PPEAL against a conviction by the Magistrate, *Kalutara*.

H. V. Perera, K.C. (with him *U. A. Jayasundera* and *S. E. J. Fernando*), for the petitioner.

Cur. adv. vult.

March 5, 1945. WIJEYWARDENE J.—

This is an appeal against the summary conviction of the petitioner under section 440 (1) of the Criminal Procedure Code. He has also filed papers in revision.

The case in which the petitioner, a Village Headman, gave evidence was one filed by the Police against two persons, *Dimitius* and *Pabilis*, for the theft of a bicycle. A warrant had to be issued for the arrest of *Dimitius* who surrendered to court about six months after the filing of the plaint. The trial had to be postponed once as *Dimitius* was absent and the petitioner stated to court that he knew *Dimitius* was ill. When the trial was taken up ultimately, the petitioner said in the course of his examination-in-chief that the two eye witnesses of the thief, *Sirisena* and *Velin*, stated to him that "a man like *Dimitius* removed the cycle". The Magistrate, thereupon, questioned him regarding his diary and repeated the question as to the statement made to him by *Sirisena* and *Velin*. Then the petitioner referred to his diary and said, " *Sirisena* and *Velin* told me that a man like *Katuwellagoda Dimitius* rode away on the cycle". The diary, however, when examined showed the entry " *Sirisena* and *Velin* said *Katuwellagoda Dimitius* rode away on the cycle".

The Magistrate acquitted the accused in the case and called upon the petitioner to show cause why he should not be punished under section 440 (1). The petitioner's explanation was, "I gave evidence according to the record in my diary—my memory was not fresh".

The Magistrate convicted the petitioner, as he was of opinion that the petitioner gave false evidence deliberately in order to make it unsafe to act on evidence of identification of Dimitius by the other witnesses. I would in this connection refer to the observations made by Wood Renton C.J. in *The King v. Sedris* :—

"Too little attention is paid, I think, sometimes in cases of this kind to the language of section 440 of the Criminal Procedure Code. It fixes the penalty which it provides, to evidence which is false 'in the opinion of the court'. Great weight should be attached, in considering case of this kind on appeal, to the importance attached by the legislature itself to the opinion of the trial Judge as to the character of any evidence whose veracity is impugned."

It is, no doubt, true that Judges should act very cautiously in exercising the summary powers given by section 440 (1) but that does not mean there should be any reluctance on the part of Judges to exercise these powers in an appropriate case. In the present case the petitioner did not purport to rely on his memory in giving this particular evidence, as is shown by the record of the Magistrate and the explanation given by the petitioner himself. He read the entry made by him in his diary and told the court deliberately something different from what was recorded by him. Independently of the opinion expressed by the learned Magistrate I have reached the decision that the petitioner made a deliberate attempt to mislead the court and gave false evidence within the meaning of section 188 of the Penal Code.

I dismiss the appeal and refuse the application in revision.

Appeal dismissed.
