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Present : Lyall Grant J.

BANDA ARATCHI v. MADAR SAIBO et al.

605—P. C. Anuradhapura, 67,104.

Village Tribunal—Exception in favour of public officers—Operation of proviso—Ordinance No. 9 of 1924, s. 61.

The proviso to section 61 of the Village Communities Ordinance does not exclude from its operation cases in which the public officer prosecuting is the party injured.

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

Rajakariar, for accused, appellant.

October 25, 1929. LYALL GRANT J.—

In this case the accused were charged with various offences. The last three were acquitted and no question arises in regard to them.

The first accused was charged with (1) voluntarily obstructing a public servant in the discharge of his public duties, an offence punishable under section 183 of the Ceylon Penal Code, and (2) using criminal force on a public servant with intent to prevent him from discharging his duty as such public servant, &c., an offence punishable under section 344 of the Ceylon Penal Code.

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The second and third accused were charged with (1) intentionally insulting and giving provocation to the complainant intending or knowing it to be likely that such provocation would cause him to break the public peace, an offence punishable under section 484 of the Ceylon Penal Code, and (2) voluntarily obstructing the said public servant in the discharge of his public functions, an offence punishable under section 183 of the Ceylon Penal Code.

In the course of the trial a charge of common assault was added against the first accused, an offence punishable under section 343 of the Ceylon Penal Code.

The first accused was convicted of assault under section 343 and the second and third accused of insult under section 484.

At the end of the prosecution the defence took the objection that the charges against the accused were triable exclusively by the Village Tribunal.

The objection was overruled. The defence called no evidence and the accused were convicted.

The only point argued in appeal was that the case was one exclusively triable by the Village Tribunal.

The Magistrate, in overruling the objection, referred to section 61 of Ordinance No. 9 of 1924 and apparently considered that he had power to try the case as the complainant was a public officer.

Section 61 provides that nothing in the section shall preclude a public officer from prosecuting in a Police Court any offence which but for the provisions of the Ordinance would be cognizable by a Police Court.

The complainant is undoubtedly a public servant and a complaint was made of obstruction and abuse of himself when engaged in the performance of public duties.

The facts of the case are that the complainant in the course of his public duties had seized some goats which had come from a rinderpest area.

The first accused attempted to drive some other goats into the building where the quarantined goats were. By orders of the complainant this attempt was frustrated. Thereafter the first accused assaulted the complainant and the other accused abused him.

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I think that the case falls within the provisions of section 61. That section restricts the ordinary jurisdiction of the Police Court. It excepts from this restriction prosecutions by public officers.

"I have not been referred to any definition of the expression "public officer," but presumably it is equivalent to "public servant."

It might be argued that the exception is not intended to apply to public officers prosecuting in cases where they are the persons injured, but I see no reason why the proviso should be read in such a restricted sense.

The section is one removing certain cases from the jurisdiction of the ordinary Court of the land.

The proviso leaves intact the jurisdiction in a certain wide class of cases. I do not see any reason why the Legislature should be presumed to have intended to take a certain class of these cases, viz., those where the prosecuting officer is also the person injured, out of the jurisdiction when this is not expressly provided for; at any rate where as in the present case the assault was a direct consequence of action taken by the complainant in pursuance of his duties as a public officer.

In the absence of authority on the point—none was quoted to me—I hold that the plea to the jurisdiction of the Court fails as the prosecutor is a public officer.

For another reason I am unable to say that the Court has no jurisdiction. No evidence has been led to show that the offence was committed within the limits of a Village Tribunal and I do not think that in the absence of proof I should be entitled to make such an assumption.

If this objection stood alone the case might be sent back for evidence on the point, but as I think the plea to the jurisdiction fails on other grounds, it is not necessary to do so.

I see no reason to interfere with the sentence on the first accused.

As the offence committed by the second accused is not one for which he could be bound over, the order to that effect, so far as he is concerned, is set aside, and the case remitted back for sentence on the second accused.

On this point see *Sub-Inspector of Police v. Silva*¹ and *Silva v. Fernando*.²

With this exception the appeals are dismissed.

Varied.

¹ 10 C. L. R. p. 6.

² 4 C. W. R. 260.