

1935

*Present : Maartensz J.*BANDARANAYAKE *v.* APPUSINGHO *et al.*108—*P. C. Puttalam, 19,970.*

Police Constable—Motor-bus suspected of overloading—Refusal to obey orders to proceed to a destination—Alleged obstruction—Penal Code, s. 183.

A Police Constable has no right to order the driver of a motor bus, suspected of carrying goods in excess of the quantity it is licensed to carry, to proceed to a stated destination for the purpose of having the goods weighed.

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

A. W. Nadarajah, for the first accused, appellant.

E. B. Wickremanayake, Acting C.C., appears as *amicus curiae*, on notice.

April 8, 1935. MAARTENSZ J.—

The appellant in this case, who is the driver of mail bus No. X 6457, was with the second accused, convicted of voluntarily obstructing Police

Constable 2566 in the discharge of his public functions in that they did not allow the Police Constable to weigh the goods carried by the bus.

The case for the prosecution is that on December 31 the Police Constable who was on duty at the market junction in Puttalam saw the bus driven by the accused come along the Anuradhapura road and turn towards the Post Office with a full load of passengers and goods on the roof. As the goods on the roof appeared to be in excess of the quantity which the bus was allowed to carry the Constable went up to the bus stand where the bus stopped and ordered the driver and the conductor not to unload the goods. The first accused said he would not allow the goods to be weighed and turning to the conductor told him to unload the goods. It transpires from the evidence of Police Constable Lawaris that what Police Constable Peter Singho wanted the first accused to do was to drive the bus with the goods to the Railway Station where the weight of the goods could be ascertained by the weighing machine or weighing platform at the Railway Station. Whether the accused unloaded the goods or not at the bus stand, it was impossible for the constable to have weighed the goods there. The obstruction therefore consisted in the refusal of the driver, the appellant, to drive the bus to the Railway Station. This, of course, was an order which he had no legal right to give and the refusal of the accused to obey it is not an obstruction punishable under section 183 of the Penal Code.

I allow the appeal and acquit the first accused. For the same reasons, in revision, I set aside the conviction of second accused and acquit him.

Set aside.

