

1962

Present : Sri Skanda Rajah, J.

MANICKAM, Appellant, and INSPECTOR OF POLICE (C. I. D.),
Respondent

S. C. 50/62—Joint M. C. Colombo, 21312

Obtaining—Meaning of term “property”—Penal Code, ss. 398, 400.

In a prosecution for cheating, it was proved that the accused, by producing another person's birth certificate as his own, obtained an Emergency Certificate from the Government to enable him to travel to India.

Held, that the Emergency Certificate was “property” as contemplated by section 398 of the Penal Code.

APPEAL from a judgment of the Joint Magistrate's Court, Colombo.

Colvin R. de Silva, with *K. Jayasekera*, for accused-appellant.

T. D. Bandaranayake, Crown Counsel, for Attorney-General.

July 16, 1962. SRI SKANDA RAJAH, J.—

The accused is charged under Section 400 of the Penal Code. The charge itself reads as follows :—

“ You are hereby charged that you did within the jurisdiction of this Court at Fort cheat K. Murugesu, Assistant Controller of Immigration and Emigration, Colombo, by deceiving him into the belief that you were Manickam s/o Carpan described in the birth certificate No. 4254 issued by the Additional District Registrar of Births, Marriages, and Deaths, Nuwara Eliya, on 8th July, 1959, and thereby intentionally induce the said K. Murugesu to do an act, to wit, issue Emergency Certificate No. A70410 to you to enable you to proceed to India, which act he would not have done if he was not so deceived, and which act caused loss to the Government, and you have thereby committed an offence punishable under Section 400 of the Penal Code .”

This charge would have been complete even without the words “ which act caused loss to the Government ”.

It was argued that the birth certificate in question, which is marked P3, related to this accused. P3 gives the date of birth of one Manickam son of Carpan and Poovai as 17th November, 1934. P5 is the birth certificate of witness Manickam son of Poovai and Carpan. It would seem very strange that two sons named Manickam were born to two different couples on the same day and at Nanu-oya, the couples bearing identical names as Carpan and Poovai. But the matter is concluded by

reference to P13, a document which has been kept in the ordinary course of business and is, therefore, admissible in evidence without the person who kept it being called. That is the register of admissions, progress and withdrawal of Government and Assisted English and Vernacular Schools kept by the head-master of St. Andrew's College, which this accused attended. His name is given in P13 (v. P13A) as Kannikan Manickam. The date of his admission is given as 30.1.50. The certificate issued by the then principal on 14th October, 1959, to this accused has been produced as P14 and that runs thus :—

“ This is to certify that Kannikan Manickam was a student of this school from 30.1.50 to 30.1.55. His admission No. was 3438 .”

This register P13 also gives the same admission number as well as the same date of admission into the school and the date 30.1.55 as the date on which he left the school. Everybody seems to have lost sight of the entry in P13A giving the date of birth of this accused as 1.6.1936. Therefore, this document P3 could not have been this accused's certificate of birth. This fact was discovered when I examined this document P13 in the course of argument. When I drew the attention of appellant's counsel this argument was abandoned.

The other matter that has been urged is a matter of law, viz., that there was no loss to the Government. The second limb of the charge, viz., the allegation that there was loss to the Government, is not necessary for this charge. The earlier part of the charge indicates that it was because this accused deceived Murugesu by tendering this birth certificate P3, that he delivered to him or issued to him the Emergency Certificate No. A70410.

In the case of *Kanagaratnam v. Bartholomeusz*¹ it was held that a permit for foreign exchange for travel could be regarded as property within the meaning of Section 403 of the Penal Code. In the course of the judgment Swan, J., quoted this passage :—

“ Whether an article is or not property does not depend on its possessing a money or market value. If it has some special value for the person or persons concerned it is property, even though its value cannot be measured in money. ”

“ Among the cases referred by the learned authors are (1) *In re Packianathan* (21 Criminal Law Journal 478), where a person who had fraudulently induced a health officer to give a health certificate was convicted under Section 419, (2) *Local Government v. Gangaram* (23 Criminal Law Journal 443) where a certificate of having passed a certain examination was held to be property within the meaning of the Section .”

¹ (1954) 56 N. L. R. 71.

I would, therefore, hold that the Emergency Certificate issued to him was "property" as contemplated by Section 398 of the Penal Code.

Besides, even the second limb would apply because this certificate has some value. There is the evidence of the Assistant Controller Murugesu that this certificate would have cost the Government about Rs. 2 to 5 and it is printed on special paper.

For these reasons, I would dismiss the appeal and affirm the conviction and sentence.

Appeal dismissed.

