1925.

Present : Jayewardene A.J.

WEERAKOON *v.* MENDIS.

27—P. C. Colombo, 10,510.

Misjoinder of accused persons—Offence of accosting—Assault on public officer in execution of his duty—Criminal Procedure Code, s. 184.

When the first accused accosted a lady passenger, an Inspector of Police, who was present, attempted to arrest him, and the accused ran away. A Muhandiram, who was in the company of the Inspector, gave chase, and the second accused, the father of the first, who came on the scene assaulted the Muhandiram. The first accused was charged with accosting, and the second with assaulting a public officer in the execution of his duty, in the same proceedings.

Held, that the accused could not be tried together as the offences were not committed in the course of the same transaction.

A Muhandiram is not a Police Officer who has the right to arrest a person under section 2 of Ordinance No. 7 of 1889.

APPEAL from a conviction by the Police Magistrate of Colombo. The facts appear from the judgment.

J. S. Jayewardene, for appellant.

January 21, 1925. JAYEWARDENE A.J.—

In this case the accused, son and father, have been convicted under section 4 of Ordinance No. 4 of 1841 and section 344 of the Ceylon Penal Code, respectively, and the first accused sentenced to pay a fine of Rs. 20 and the second to pay a fine of Rs. 75. The first accused has not appealed, but the second accused appeals against his conviction, and counsel on his behalf has taken two points, In the first place it is objected that the conviction is bad, inasmuch as there

is a misjoinder of persons accused of different offences not committed in the same transaction. In the second place it is contended that the Muhandiram of Salpiti korale, whom the second accused is said to have assaulted, was not acting in the execution of any duty as a public servant at the time of the assault, if it took place. As regards the first objection, I think it is entitled to prevail. Under section 184 of the Criminal Procedure Code it is only persons who are accused of jointly committing the same offence or of different offences in the same transaction who can be tried together in one and the same trial. The first accused is said to have accosted some lady passenger who had gone down to Mount Lavinia, and the Inspector of Police at Mount Lavinia seeing the first accused committing this offence attempted to arrest him, as he was entitled to do under section 2 of Ordinance No. 7 of 1889, which amends Ordinance No. 4 of 1841 in certain respects. The first accused escaped and hid under a culvert. The Muhandiram of Salpiti korale happened to be in the company of the Inspector at the time, and the Inspector, the Muhandiram, and several others ran after the first accused for the purpose of arresting him. At this stage the second accused, the father of the first accused, appeared on the scene and struck at the Muhandiram with a big piece of wood. Now, it cannot be said that this offence of accosting passenger ladies and the assault on the Muhandiram are offences committed in the same transaction. The offence of accosting was complete when the accused ran away from the place where the lady passengers were, and the assault on the Muhandiram by the second accused had no connection whatever with the offence of accosting the lady passengers by the first accused. I do not think that any authority is necessary for so obvious a proposition, but I might say that the same principle has been accepted by the Courts of India, and I might refer to the judgment in the case of *Gobind Koeri v. Emperor* [1] as an illustration . In that case Gobind Koeri was caught by some persons placing clods of earth on a railway line. While being taken away by them, Gobind Koeri was, shortly afterwards, rescued by Hira Mander and Manger Koeri. Gobind Koeri was charged under section 128 of the Railway Act for placing clods on the line. Hira Mander and Manger Koeri were charged under section 225 of the Penal Code for rescuing Gobind Koeri from lawful custody. All three accused were tried jointly in one trial and were convicted. It was held that the offences not having been committed in the same transaction, the persons accused of each of these offences should have been tried separately, and that the Court had no jurisdiction to try them in the same case. The reversal of the conviction was based on ruling of the Privy Council in the well known case of *Subramania Ayyar v. King Emperor*.[2] The principle laid down in the last mentioned case has been consistently followed by this Court in dealing with objections taken to the joinder of

[1] *29 Cal. 385.*

[2] *(1901) 25 Mad. 61.*

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charges, which involve a breach of the express provisions of the Criminal Procedure Code. In the result I am compelled to uphold the first objection taken on behalf of the appellant.

As regards the second objection, that the Muhandiram was not acting in the exercise of any duty as a public servant, in my opinion there is no evidence in the case to show what duty the Muhandiram was performing at the time the assault took place. He was not entitled to arrest the first accused, because under the Ordinance No. 7 of 1889, already referred to, section 2, it is only a Police Officer who has the right to arrest a person committing an offence under that Ordinance. The Muhandiram might be a Peace Officer, but he is not a Police Officer. It is not shown that he was acting under the direction of the Police Inspector who was attempting to arrest the first accused. In the absence of any evidence on the point, I think it must be held that the conviction of the accused under section 344 of the Penal Code of assaulting or using force to a public officer in the exercise of his duty cannot also be sustained.

I would, therefore, allow the appeal of the second accused, and direct that he be discharged.

Appeal allowed.