

1941

Present : Howard C.J.

THURAIAPPAH *v.* ELIYAWAN.

807—M. C. Jaffna, 10,457.

False information to public servant—Intent to cause the public servant to use information to injury of a person—Penal Code, s. 180.

Where the accused gave false information to a Fiscal's Process Server with regard to the identity of the defendants in a civil action and caused him to serve summons on the wrong persons with the result that judgment was entered against the defendants without notice to them,—

Held, that the accused had given false information to a public servant within the meaning of section 180 of the Penal Code.

Kindersley v. David (11 N. L. R. 371) doubted.

A PPEAL from a conviction by the Magistrate of Jaffna.

N. Nadarajah, for the accused, appellant.

H. W. Thambiah, for the complainant, respondent.

Cur. adv. vult.

February 14, 1941. HOWARD C.J.—

This is an appeal from a conviction by the Magistrate of Jaffna on a charge of giving to a Fiscal's Process Server, a public servant, information which the appellant knew to be false contrary to section 180 of the Penal Code. It was further stated in the particulars of the charge that the appellant pointed out certain persons to the process server as Vellayan Kasian, Vellayan Maniccan and Vellayan Murugan, the defendants in case No. 13,048 of the Court of Requests, knowing it likely that he would cause the said process server to use his lawful powers as a public servant to the injury or annoyance of the said Vellayan Kasian, Vellayan Maniccan and Vellayan Murugan. It was established before the Magistrate by the evidence of the process server, V. Ponnambalam, that the appellant pointed out certain persons as being the defendants in the civil case C. R. Jaffna, No. 13,048. Ponnambalam had been entrusted with a summons to serve on these defendants and proceeded to serve it on these persons who were not the witnesses—V. Kasian, V. Maniccan and V. Murugan. He states that he believed the appellant was pointing out the three proper persons. The three persons who were served, accepted the summons without protest. After service Ponnambalam reported to the Fiscal's Officer that he served the summons on the persons named therein. The Deputy Fiscal subsequently received a complaint from the defendants' Proctor in case No. 13,048 that judgment had been obtained without service of summons on the defendants. The Deputy Fiscal then held an inquiry and subsequently instituted the proceedings that resulted in the conviction of the appellant of committing an offence under section 180 of the Penal Code.

It is contended by Counsel for the appellant that the facts proved in this case do not establish an offence under section 180 of the Penal Code. In support of this contention I have been referred to *Kindersley v. David*¹,

¹ 11 N. L. R. 371.

where the accused gave information, which was found to be false, to the Chairman of the Local Board against an Inspector employed by the said Board. It was held that he was not liable to be convicted of an offence under section 180 of the Penal Code, inasmuch as the Chairman could not, in the lawful exercise of his power, cause any injury to the person complained against. In this case it appeared that the Chairman although presiding over the Board had no power to act by himself independently of the Board. Any action taken is the action of the Board, a body corporate. Grenier J. was of opinion that an offence under section 180 is committed in cases where a person give false information to a public servant who has power, to be exercised by him to the direct and immediate prejudice of another against whom the information is given. In support of his opinion Grenier J. referred to the Indian case of *Regina v. Perianan*¹, where it was held that section 182 did not apply if the public servant misinformed is only competent to pass and passes on information, and the power exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled. Counsel for the appellant contends that Ponnambalam, the process server, could not exercise any such power. All he could do was to make a report to the Fiscal and the fact that the Fiscal could exercise such power did not on the authority of *Regina v. Perianan* bring what was done by the appellant within the ambit of section 180. The authority of *Regina v. Perianan* has been doubted and seems to be contrary to the law as stated in *Emperor v. Jonnalagadda Venkatrayudu*², and in the following passage from *Mayne's Criminal Law of India*, p. 592 :—

“The Madras Court has held that false information given to a village magistrate, who could not himself act upon it, but could only pass it on to some higher authority, did not come within the words of this section. They thought that the words ‘to use his lawful power’ referred to some power to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. But, conceding this to be so, surely information given to A, for the purpose of being passed on to B, and which it was his bounded duty to pass on, must be considered as having been given, and intended to be given, to B. It would, of course, be different if the false information was given to someone who was under no legal obligation to take any action upon it. False information that stolen property would be found in a particular house, if searched for, does come within the section. If the information names the houses of several persons, only one offence has been committed.”

Mayne, however, as pointed out by Layard C.J., in *Perera v. Silva*³, does concede that no offence is committed if the false information is given to someone who is under no legal obligation to take any action on it. Some power must be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. In this case it is relevant to consider what were the powers and obligations of Ponnambalam, the process server,

¹ *I. L. R. 4 Mad. 241.*

4 A. C. R. 33.

² *I. L. R. 28 Mad. 586.*

on receipt of the information that certain persons were the defendants in C. R. Jaffna, No. 13,048. It was then his power and duty to serve the summons on the persons. Did this act of service taken by him tend to some direct and immediate prejudice against such defendants? I do not think that it can be argued that it did not. The result of the act of service was a report to the Deputy Fiscal by Ponnambalam stating that service on the defendants had been effected. On that information the Commissioner of Requests could and in fact did proceed to make an order of Court prejudicial to the defendants in the case. I am, therefore, of opinion that the false information supplied by the appellant brought the case within the ambit of section 180.

Counsel for the appellant has also contended that even if the offence is within the ambit of section 180 proof of its commission has not been made in strict compliance with the law. The ingredients of the offence as charged in this case may be summarized as follows:—

- (1) that the appellant gave some information ;
- (2) that the person to whom it was given was a public servant ;
- (3) that the information was false ;
- (4) that the appellant when giving it knew it to be false ;
- (5) that the appellant intended or knew that his information will probably cause Ponnambalam to act to the injury or annoyance of the defendants.

(1) and (2) have been proved by the evidence of Ponnambalam and Sinnavan Thillian. (3) has been proved by the three defendants in C. R. No. 13,048. (4) is necessarily inferred from the evidence of the prosecution witnesses coupled with that tendered by the accused. (5) is also a necessary inference from the evidence of the prosecution witnesses. It appears that in these circumstances necessity for the formal production of documents connected with C. R. Jaffna, No. 13,048, does not arise.

It appears to me that the appellant has also committed an offence under the other part of section 180 inasmuch as he knew it was likely that he would, by giving false information, cause Ponnambalam to do something, namely, serve the summons, which Ponnambalam ought not to do if the true state of facts respecting which such information was given were known to him. If the appellant was not properly convicted under the charge as framed I should have been prepared to find him guilty under the other part of the section.

For the reasons I have given the appeal is dismissed.

Appeal dismissed.