

1916.

Present: De Sampayo J.

MUDALIHAMY v. ISMA *et al.*909 to 917—*P. C. Anuradhapura. 44,179.*

Penal Code, s. 183—Voluntarily obstructing person acting under the orders of a public servant—Orders not authorized by law.

In the case of a non-cognizable offence (such as that under the Game Protection Ordinance), the person who searches for and seized anything necessary for an investigation must act under the orders of a Police Magistrate.

When an Arachchi, acting under the orders of a Ratamahatmaya, seized (for purposes of inquiry) a wild buffalo captured by the accused, and the accused rescued the animal by force,—

Held, that the accused could not be convicted under section 183 of the Penal Code.

"The complainant cannot be said to have been obstructed in the discharge of any public function. The public function must for this purpose be legally authorized; it is not enough that the public servant, when he acts under any order, believes that the order is lawful. The order must in fact be lawful.

THE facts appear from the judgment.

A. St. V. Jayewardene, for accused-appellant.

October 6, 1916. DE SAMPAYO J.—

The facts relating to the points of law argued on this appeal are simple. The complainant is an Arachchi, and on the orders of the Ratamahatmaya he went to seize and produce for the purpose of inquiry a wild buffalo which was said to have been captured by the first accused and to have been then in his custody. The complainant found the animal paired with another buffalo. He seized both, and was removing them, when all the accused came and forcibly rescued the animals. In these circumstances, the accused were charged, under section 183 of the Penal Code, with having voluntarily obstructed the complainant while acting under the lawful orders of the Ratamahatmaya in the discharge of his public functions. The question is whether the Ratamahatmaya's order was a lawful order within the meaning of this section of the Penal Code. Section 124 of the Criminal Procedure Code provides for an inquirer into crimes causing a headman to search for and produce anything considered to be necessary for the purpose of an investigation in a cognizable case. The offence which the first accused may be said to have committed is one under section 12 (4) of the Game Protection Ordinance of 1909, which makes it an offence to capture a buffalo without a licence. But that is not a "cognizable" offence as defined

in the Criminal Procedure Code. In the case of a non-cognizable offence, such as that under the Game Protection Ordinance, the person who searches for and seizes anything necessary for an investigation must act under the orders of a Police Magistrate. The Ratemahatmaya, therefore, had no authority to issue the order in question to the complainant. In these circumstances, the complainant cannot be said to have been obstructed in the discharge of any public function. See *Baron Soysa v. Aron Singho*.¹ The public function must for this purpose be one legally authorized (*R. v. Lillah Singh*²), and it is not enough that the public servant, when he acts under any order, believes that the order is lawful; the order must in fact be lawful (*Broadhurst v. Hendrick Singho*³). I regret that in this particular case the prosecution should fail, because, I think, the accused acted in a manner which deserved punishment, but I am obliged to decide the point of law in favour of the accused.

The convictions are set aside.

Set aside.

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DE SAMPAYO
J.
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