

1921.

Present : De Sampayo J.

MURPHY *v.* PUNCHAPPU.

1,078—*P. C. Kegalla, 32,010.*

Penal Code, s. 180—False information to Assistant Government Agent about a headman—Knowledge that public servant “will use his lawful power to the injury” of such person.

False information given to an Assistant Government Agent about a headman (Gan-Arachchi) was held to be an offence under section 180 of the Penal Code, though it is the Government Agent and not the Assistant Government Agent who can dismiss the headman, as the Assistant Government Agent may suspend the headman, fine him, or report him to the Government Agent for dismissal.

THE facts appear from the judgment.

H. J. C. Pereira, K.C. (with him *Swan*), for accused, appellant.

M. W. H. de Silva, C.C., for respondent.

December 20, 1921. DE SAMPAYO J.—

In this case I have only to consider one or two legal objections taken on behalf of the accused appellant. The charge against the accused was that on April 26, 1921, he had by a petition of that date given false information to the Assistant Government Agent of Kegalla against the Gan-Arachchi of Galpola, an offence punishable under section 180 of the Penal Code. The complaint to the Court was made by Mr. Murphy, who has been Assistant Government Agent since May 17, 1921, so that he was not the public servant to whom

the false information was given. His predecessor was Mr. Seymour, who, in fact, received the petition, and referred it to the Police for inquiry. Section 147 (1) (a) of the Criminal Procedure Code provides that no Court shall take cognizance of any offence under sections 170 to 185 of the Penal Code, except with the previous sanction of the Attorney-General, or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate. It is objected that "the public servant concerned" was Mr. Seymour, and not Mr. Murphy. The Police Magistrate disposed of the objection by saying that in this connection it is the servant holding the office of the Assistant Government Agent for the time being that is concerned, and not the individual. There is some force in this view of the matter. But it is more satisfactory to deal with the objection in another way. The above section authorizes the recognition of the complaint of any person, provided the previous sanction of the Attorney-General is obtained. Now, Mr. Murphy did not obtain the sanction of the Attorney-General, but section 425 provides that no judgment of a competent Court shall be reversed or altered on account merely of the want of any sanction, unless such want has occasioned a failure of justice. In this case no failure of justice has been occasioned by the want of the Attorney-General's sanction, and I think the objection is not fatal to the conviction.

Again, the gist of the offence is that false information is given to a public servant with the intention of causing, or with the knowledge that the information is likely to cause, such public servant to use his lawful power to the injury or annoyance of any person. Now, it appears that an Assistant Government Agent cannot dismiss a headman like the Gan-Arachchi, and that these things can only be done by the Government Agent, and it is therefore contended that an offence under section 180 of the Penal Code has not been committed. But it appears at the same time that an Assistant Government Agent may suspend a headman, fine him, or report him to the Government Agent for dismissal. It is obvious that by doing any of these acts, the Assistant Government Agent would use his lawful power to the injury and annoyance of the headman. I therefore think that this objection also cannot be sustained.

The appeal is dismissed.

Appeal dismissed.

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DE SAMPAYO
J.

*Murphy v.
Punchappu*