

1931

*Present: Macdonell C.J.*FERNANDO *v.* WICKREMESINGHE.409—*P. C. Colombo, 2,647.*

*Obstructing a public servant—Inciting others by words to obstruct—Overt act—
Penal Code, s. 183.*

Where the accused by words incited others to obstruct a police officer empowered to execute an order under section 114 of the Criminal Procedure Code,—

Held, that he was guilty of voluntarily obstructing a public servant in the discharge of his functions.

A PPEAL from a conviction by the Police Magistrate of Colombo.

N. E. Weerasooria, for accused, appellant.

August 31, 1931. MACDONELL C.J.—

In this case the accused was charged under section 183 of the Ceylon Penal Code with voluntarily obstructing a public servant, namely, a Superintendent of Police, in the discharge of his public functions, was convicted and fined, and brings an appeal from that conviction. The facts were that a Police Magistrate had issued an order under section 114 of the Criminal Procedure Code prohibiting the picketing of a certain newspaper office in Colombo. No exception is taken to that order which need not therefore be set out. The evidence as to obstruction was as follows:—The Superintendent of Police said: "I saw this accused come up Main Street leading a small party of women, *i.e.*, four women. They turned into Bristol Street and I stopped them—with Sub-Inspector Marriott. I asked the women to go quietly away and to move on. As I was not certain if they understood me I called Sub-Inspector Fernando and asked him to explain the emergency order of this Court made in case No. 26,411 which I had in my hand. While the Sub-Inspector was explaining this and interpreting for me, this accused came between me and the party of women and told them in Sinhalese to sit down. He also made a downward motion with his hands. I ordered his arrest and gave him in charge of Sub-Inspector Fernando—I then repeated my order to the women to move on and they obeyed it. Accused was released later on personal bond to appear before this Court. Beyond this obstruction complained of, accused was quite orderly." The evidence of the Sub-Inspector was: "The Superintendent asked me to interpret what he said. As I was doing so accused turned round to the women and asked them not to go away but to sit down there. He was exhorting the women to sit down. Mr. Muller ordered me to arrest the accused. When accused interfered the women did not go away—they did not sit down. There were about five women and accused led them." The learned Magistrate accepted this evidence and in particular that the accused made a motion with his hands.

It has been argued that this was "a mere verbal refusal to allow a public servant to perform his duty and so that it does not constitute voluntarily obstructing" within the meaning of section 183 (*per* Lascelles C.J. in *Fernando v. Alia Marikar*¹). The same judgment goes on to say: "There must be some overt act done or physical means used." I think in this case there was something more than a mere verbal refusal, and that there was an overt act done or physical means used. The accused did not refuse to obey the order but he said and did something which amounted to an incitement to other people to disobey that order. If the women in question had done as he requested, namely, sat down in the public street, there would have been an act by them which would have "rendered force necessary" for the due enforcement of the Magistrate's order—see *Rasavasagram v. Siwandi*². *Per* Wood Renton J. The accused had endeavoured to place "an obstacle" in the way of carrying

¹ *Court of App. Cases 175.*

² *9 N. L. R. 38.*

out of the order and this was an obstruction to the public servant attempting to see that order carried out. One may compare the case to the law as to assault. Mere words do not amount to assault, but if they are accompanied by a threatening attitude they may constitute an assault. Here there were words and an overt act instigating to disobedience of this order, and therefore I think an obstruction to the public servant attempting to carry it out.

For the above reasons I am of opinion that this appeal must be dismissed.

Appeal dismissed.

