

*Present:* Lyall Grant J.

1929

KING *v.* DINGIRI MENIKA.

102—D. C. (Crim.) Kandy, 4,276.

*Public servant—Charge of obstruction—Appointment of public servant—Proof—Evidence Ordinance, s. 91.*

Where in a charge of obstructing a public servant in the discharge of his public duties, the public servant states that he holds the appointment in question and the statement is not contradicted, it is not necessary to produce his act of appointment.

**A** PPEAL from an acquittal from the District Court of Kandy.

*Ilangakoon, C.C.*, for the appellant.

December 3, 1929. LYALL GRANT J.—

This is an appeal by the Attorney-General from an acquittal. Four persons were accused of voluntarily obstructing an arachchi in the discharge of his public functions and with cognate charges. After evidence was led for the prosecution and the prosecution case closed it was argued for the defence that there was no proof that the arachchi was acting for the arachchi of Palle Talawinna, the area or wasama in which the accused were arrested by him. The learned District Judge found that the prosecution had failed to prove that the complainant arachchi was a public servant and that he acted for the arachchi of the particular wasama on this particular day, and that consequently the arrest of the accused was illegal. He says that the nature of the charges against the accused made it incumbent on the prosecution to prove from the proper source that the arachchi was acting on this particular day for the arachchi of this particular wasama and that the functions he exercised were within

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the scope of his authority. The Crown then asked for an opportunity to produce the necessary proof at that stage but the learned District Judge was of opinion that he had no power to do so.

The complainant arachchi admitted in cross-examination that the accused lived in a village not in his wasama, but he said he had been acting for the arachchi of their wasama in January, 1929, and was still acting for him. He was not asked to produce his letter of appointment.

I think that in the absence of conflicting evidence, and in the absence of any request to produce his authority, the arachchi's evidence as to his authority to act in the particular place must be accepted. By section 91 of the Evidence Ordinance, exception 1, when a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved. The arachchi's evidence that he acted as arachchi in the place in question on the day in question and that he did so by proper authority has not been contradicted in any way, and in such circumstances I am of opinion that this exception applies, and that there was no need for him to produce his letter of appointment for the purpose of proving the appointment. In his judgment, however, the learned District Judge has gone rather beyond the objection which was taken by the defence inasmuch as he says that he considers that the nature of the charges against the accused made it incumbent on the prosecution not only to prove from the proper source that the arachchi was acting on this particular day for the arachchi of this particular wasama, but also that the functions he exercised were within the scope of his authority. No question was raised at the trial as to the scope of the authority of the arachchi, and the trial appears to have proceeded on the assumption that the functions of the arachchi were those of a Peace Officer as defined in the Criminal Procedure Code, and that therefore he was a public servant under section 19 of the Penal Code. As, however, the point has been raised and as the case will have to go back, I think it will be more in order that the arachchi should be given an opportunity of producing his letter of appointment in order that the Court may be able to ascertain whether or not he was acting within the scope of his authority when he proceeded to the arrest of the fourth accused.

The order of acquittal is set aside, and the case is sent back in order that the prosecution may be enabled to lead further evidence on this point and for further proceedings. From the record before me it is not apparent that the defence had an opportunity of leading evidence. At the close of the prosecution case the technical point was raised and upon that technical point the case has been decided. In fairness to the accused they ought to have an opportunity of leading any evidence which they may desire to lead.

*Set aside.*