

1971

*Present : de Kretser, J.*

V. THURAIRAJAH, Appellant, *and* A. RASIAH  
(Officer-in-Charge, Kayts Police), Respondent

*S.C. 710/70—M. C. Kayts, 5801*

*Criminal Procedure Code—Section 440—Conflict between the testimony of two witnesses  
—Whether one of them can be punished for perjury—Contempt of Court.*

A witness is not liable to be punished summarily under section 440 of the Criminal Procedure Code, for committing contempt of court by giving false evidence, on the basis of a statement in his evidence which is contradictory of a statement which he had made earlier to another witness whose evidence on this point the Court regards as that of a truthful witness.

**A**PPEAL from an order of the Magistrate's Court, Kayts.

*G. F. Sethukavalar*, with *N. Sivarajasingham* and *G. L. P. Thambinayagam*, for the witness-appellant.

*K. W. D. Perera*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 24, 1971. DE KRETSEK, J.—

The Magistrate of Kayts acquitted the accused in the case of Arumugam Rasiah, O.I.C., Kayts Police *v.* Karthigesu Appiah because in his view the contradictions between the evidence of Thurairajah and Thevarajah who were witnesses for the prosecution made it unsafe to convict. He thereafter proceeded to punish Thurairajah summarily for committing contempt of court by giving false evidence. Thurairajah was fined Rs. 50 and he has appealed.

Counsel for the Crown does not seek to support the conviction.

The Magistrate in coming to the conclusion that Thurairajah had given false evidence in Court when he said that all that had happened was that the bus had fallen in rut, relied on the fact that in a statement made to the Police he had said the bus had struck a telegraph post. What the Magistrate seeks to do is to rest his decision not on what the witness says but on what a Police officer who the Magistrate thinks is a truthful witness says the witness told him.

Counsel cited the case of *Ahamath v. Silva*<sup>1</sup> which is exactly in point. In that case the witness said that he did not sell rubber to the accused. The Inspector of Police said the witness did tell him that he sold rubber

<sup>1</sup> (1920) 22 N. L. R. 444.

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to the accused. Schneider, J. in setting aside the conviction pointed out that the provisions of Section 440 are not intended to apply to a case where a conflict arises between the testimony of two witnesses.

In the case of *Lebbe v. Lebbe*<sup>1</sup> Drieberg J. pointed out that it was not open to the Court when there is a charge under Section 440 to base the charge on depositions other than those in the proceedings.

The appeal is allowed and the conviction and sentence are set aside.

*Appeal allowed.*

