1927.

Present: Drieberg A.J.

JAMALDEEN *v.* CARUPPEN

99—P. C. Hatton, 4,566.

False information—Statement under section 122 (1) of Criminal Procedure Code—Answer to questions by police officer—Penal Code, s. 180.

Statements made under section 122 (1) of the Criminal Procedure Code in answer to questions put by a police officer may be made the subject of a charge under section 180 of the Penal Code.

APPEAL from a conviction by the Police Magistrate of Hatton. The appellant was charged with having given a sergeant of the Hatton police information, which he knew to be false, namely, that his house had been broken into and Rs. 75 stolen from it by three coolies whom he suspected, intending the said police sergeant to use his lawful powers as a public servant to the injury and annoyance of the said coolies. The complaint was in the first instance made to the superintendent of the estate in which the appellant was

employed. The superintendent sent a message to police, whereupon the police sergeant arrived and made inquiries, in the course of which the appellant made the statement which formed the subject-matter of the charge. The learned Police Magistrate held that the story of the theft was a fabrication and convicted the accused. He held further that the statement made to the police sergeant was one falling under section 121 (1) of the Criminal Procedure Code:

James Joseph, for accused, appellant.

R. F. Dias, C.C., for respondent.

April 27, 1927. DRIEBERG A.J.—

This appeal was argued on March 30 when there was no appearance for the respondent. As the question involved was one of importance I directed that notice be given to the Attorney-General, and there was further argument on April 12, when the respondent was represented by Crown Counsel.

The appellant was charged with having given to Sergeant Jamaldeen of Hatton police information which he knew to be false, viz., that his house had been broken into and Rs. 75 stolen from it and that he had reason to suspect that three fellow-coolies were the culprits, intending the said Jamaldeen to use his lawful powers as a public servant to the injury and annoyance of the said coolies, an offence punishable under section 180 of the Penal Code. He was convicted and sentenced to six months' rigorous imprisonment and has appealed.

The learned Police Magistrate has held, and I agree with him, that the story of the theft was a pure invention of the appellant. The superintendent of the estate had ordered the three coolies to search the lines for stolen estate tools and the appellant's room was searched. The appellant apparently resented this and made a complaint to the superintendent, Mr. Newton, the terms of which are not known as Mr. Newton did not give evidence, but Mr. Newton telephoned to the police and Sergeant Jamaldeen, who received the message, says it was to the effect that the appellant had informed the superintendent that the three coolies had broken into his house.

Sergeant Jamaldeen went to the estate and made inquiries. He was there told by the appellant that people had entered his room by scaling a wall, that they had broken the padlock of his box and removed Rs. 75; he said that the three coolies, Kathen, Sinnasamy, and Kadiravalai, were suspected, but that his only reason for suspicion was that they had been sent by the superintendent to search for estate tools.

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There had been in fact no theft; the padlock of the box, which was in order, showed no signs of violence, and the appellant then said that the money had been taken from another box by means of a false key. He said that the Rs. 75 stolen was all the money he had, but it was found that he had Rs. 75 concealed in a provision box. As a result of the appellant's statement the rooms of the three coolies were searched and they were taken before the superintendent and to the police station.

The story of the theft having been fabricated by the appellant, and it having been indicated by him, with the intention of causing the police to act to their injury and annoyance, that he suspected the three coolies, all the necessary elements of an offence under section 180 exist. The learned Police Magistrate, however, was confronted with a difficulty arising out of some observations of Jayewardene J. in *Sub-Inspector of Police v. Babhi* [1] that statements made in the course of an investigation under section 122 of the Criminal Procedure Code could not be made the foundation of a charge under section 180 of the Penal Code. He held, however, that the statement to the sergeant was one falling under section 121 (1) of the Criminal Procedure Code, and was not a statement made in the course of an investigation under section 122, and that it could, therefore, be made the subject of a charge under section 180 of the Penal Code. Having regard to the practice on estates in the district of coolies not appealing to the police in the first instance but of placing their complaint before the superintendent, he considered the complaint to Mr. Newton as a request by the appellant that Mr. Newton should get the police to the estate to receive and record his complaint. Such a case would be indistinguishable from one where a man sent his servant or a friend to the police station with a request that a police officer should be sent to him to hear a complaint he had to make; the statement made to the police officer would in my opinion be the first complaint, and if false would render the maker liable to a prosecution under section 180 or section 208 of the Penal Code. In fact, if the offence complained of be a cognizable one, the complainant would by making it be setting the criminal law in motion against the person accused. But what distinguishes the present case is that there is no evidence that the appellant asked Mr. Newton to send for the police. Further, I do not understand that the practice referred to imposes on the superintendent an obligation to communicate with the police, for I assume that a superintendent would use his discretion in the matter, but in the case of *Jonnalgadda v. Venkatrayadu* [2] the information was given to a village Magistrate who was bound by law to pass it on to a Station House Officer. For these reasons I do not agree with the learned Police Magistrate that the statement made by the appellant

[1] *(1923) 25 N. L. R. 117.*

[2] *28 Mad. 565.*

to the sergeant when he made his inquiry on the estate was one falling under section 121 (1) of the Criminal Procedure Code. It remains to be considered whether the appellant can be convicted under section 180 of the Penal Code if his statement falls under section 122 of the Criminal Procedure Code.

In *Sub-Inspector of Police v. Babbi* (*supra*) the false statement was in an initial complaint under section 121. The Police Magistrate acquitted the accused on the ground that the charge should have been laid under section 208 of the Penal Code. The Supreme Court held that the charge not being a serious one the accused should be tried summarily under section 180 and ordered a new trial. The question whether a statement made in the course of an investigation under section 122 could form the foundation of a charge under section 180 of the Penal Code was not a point which presented itself for decision.

The proviso to section 122 (3) of the Criminal Procedure Code was enacted to relax in two cases the limitations imposed by section 122 (3). The first case is that of a statement made to a police officer under section 122 which would be admissible under section 32 (1) of the Evidence Ordinance, but which is rendered inadmissible by section 122 (3) if made to a police officer in an investigation under section 122.

The second case is where the statement is a false information constituting an offence under section 180 of the Penal Code, in which case it can be used as evidence in the charge, and I cannot see how these words can limit its use to a collateral purpose only such as to corroborate the evidence a witness has given in a prosecution under section 180.

Mr. Joseph contended that the words "such statement" in the last sentence of the proviso meant such statements as fall within section 32 (1) of the Evidence Ordinance, but the practical application of this construction is not easy to follow.

It was also said that section 180 was limited to information given voluntarily, and that there was no offence where the statements were made in answers in which the person interrogated was bound by law to answer truthfully. Reference was made to a passage in *Dr. Gour's Penal Law of India, 3rd ed., p. 916*, where it is stated that answers to a police officer under section 161 of the Indian Criminal Procedure Code do not constitute the giving of information contemplated by section 182 of the Indian Penal Code, which corresponds to our section 180; this observation is based on a Burma case, the report of which is not available. In *Thampu v. Nagan*[1] de Sampayo J. adopted the principle laid down in *Gour*; in that case the false statement was made by a person who the

[1] *(1923) 26 N. L. R. 69.*

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injured man said had seen him stabbed, and it was made to a headman; it was not one made under section 122 of the Code, and the effect of the proviso to section 122 (3) was not considered. There is also the case of *The Emperor v. Naga Aung Po*,[1] referred to by Jayewardene J. in his judgment in *Sub-Inspector of Police v. Babbi* (*supra*), in which it was held that the expression " give information " means volunteering information and does not extend to answers given to questions put by a public servant. The report of this case is not available.

Very little purpose is served by an examination of the Indian law on this point owing to the very great points of difference between the Indian and Ceylon enactments, of which it is not necessary to state more than one namely, that there is no express provision in the Indian Criminal Procedure Code enabling statements made to police officers in investigations under section 161 to be used in evidence in a charge under section 182 of the Indian Penal Code. It should also be noted that whereas our section 122 (2) requires a person questioned to answer truly all questions put to him, the word " truly " is omitted from the corresponding section of the Indian Criminal Procedure Code, with the result that there is in India no legal obligation on a witness to speak the truth in a police investigation, except possibly in the limited cases mentioned in section 202 and 203 of the Indian Penal Code. *Sohoni's Criminal Procedure Code, 10th ed., p. 352.*

The fact that a statement was made in answer to questions may in many cases lend strong support to a defence that it was made *bona fide* and with no ulterior motive, but I find it difficult to hold that in no circumstances can statements made under section 122, in answer to questions, form the basis of a charge under section 180 when there is express provision that such statements can be given in evidence in a charge under that section.

If this is so it will be possible for a person to arrange for the initial complaint under section 121 (1) to be given by another; this information might be limited to a bare statement of the commission of the offence without mention of persons charged so as not to compromise the informant; and thereafter falsely charge persons at the police investigation, with immunity from prosecution under section 180; it may rightly be said that a statement made in these circumstances is voluntary.

As I am of opinion that the conviction is right if the statement be regarded as one made under section 122, I dismiss the appeal.

Appeal dismissed.

[1] (1925) 12 C. L. J. (1944).