

*Present* : Akbar J.

KING *v.* NERENCHA.

90—*P. C. Jaffna*, 6,292.

*False information to Public Servant—Belief that the information is true—Bona fides—Penal Code, s. 180.*

Where a person is charged with giving false information to a Government Agent against a Udayar,—

*Held*, that it would be a good defence that the accused had reasonable grounds for believing the information to be true.

**A** PPEAL from a conviction by the Police Magistrate of Jaffna.

*Peri Sunderam*, for appellant.

*Schokman, C.C.*, for the Crown, respondent.

March 12, 1930. AKBAR J.—

The accused has been fined Rs. 50 for giving false information to the Government Agent against the Udayar of Navalay under section 180 of the Ceylon Penal Code. The facts admittedly are as follows: The accused was a witness in a case brought by one Chelliah in 1928 against the Udayar. This was a criminal case for mischief and obstruction, but the complainant was referred by the Magistrate to the Civil Court. According to the accused, when he returned from Court to his village, one Govinden and another person abused him for giving evidence against the Udayar. The accused then states that a series of petty thefts was committed against his property. In this he is corroborated to some extent by the evidence of the Police Vidane. Then on two successive days the Police Vidane searched his house on the orders of the Udayar for a concealed case of chickenpox which ended in nothing. The Police

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Vidane states that after his first visit he reported that there was no case of chickenpox in the house of the accused. In spite of this the Udayar ordered him to search again the accused's house. Even then no case of chickenpox was found. The accused then, apparently at the end of his patience, asked the question "have you no confidence in me?" Upon this the accused sent the petition filed in this case to the Government Agent. It will be observed that the petition is in English, having been typed by a petition drawer. It may be that the petition drawer has somewhat exaggerated the complaint made by the accused, but it seems to me that the petition was written in despair asking for relief against the Udayar, and that he honestly believed that the Udayar was at the bottom of his troubles. In this connection I should like to quote a case decided by the Supreme Court, namely, *Gunatileke v. Elisa et al.*<sup>1</sup>. The following passage from Shaw J. should, I think, be applied in this case: "Although I quite agree with the remarks of the present Chief Justice in *Cookson v. Appuhamy*<sup>2</sup> of the importance for the protection of the villagers themselves, of punishing false and malicious petitioners, I think that the provisions of section 180 should be exercised very sparingly and with great caution in the case of petitions against the police to their superior officers, for it is much better that a police superintendent's time should be occasionally wasted in inquiring into an unfounded charge against one of his subordinates than that villagers should be deterred by criminal prosecutions from laying their complaints against the police, which are necessarily somewhat difficult to prove in a Court of law, before their superior officers for departmental inquiry." In my opinion this is not case where the accused acted maliciously, and the result of prosecuting in cases like these will be to stifle complaints being legitimately made by villagers *bona fide* against police officers.

As Dr. Gour states in Vol. I., page 991: "If the accused has reasonable grounds for believing the information given to be true that is a sufficient defence." The question depends on the accused's *bona fides*. If he was reckless but honest the section saves him, for the section was not meant to punish those who blunder into giving false information, but those who do it with an ulterior object in view. At the time the accused was abused by Govinden he had a witness with him who is now dead. The petition was given in 1928, and it is unreasonable to expect the accused to prove the truth of every word in that petition nearly eighteen months after that date. I think in all the circumstances the accused did not act spitefully in sending this petition but only to get relief.

I set aside the conviction and acquit the accused.

*Set aside.*

<sup>1</sup> 5 C. W. R. 25.

<sup>2</sup> (1911) 15 N. L. R. 120.