1940 *Present :* **Howard C.J.**

A. G. A., MULLAITTIVU *v.* SELVADURAI.

274—M. C. Mullaittivu, 16,130.

False information—Given to public servant—Elements of offence—Penal Code, s. 180 (Cap. 15).

To constitute the offence of giving false information to a public servant, punishable under section 180 of the Penal Code, there must be proof that the accused knew the information to be false or believed it to be false.

It is not sufficient to prove that he had reason to believe the information to be false or that he did not believe it to be true.

The accused cannot be convicted if he proves that he had reasonable grounds for believing the information to be true.

APPEAL from a conviction by the Magistrate of Mullaittivu.

S. Nadesan for the accused, appellant.

E. H. T. Gunasekera, C.C., for the complainant, respondent.

Cur. adv. vult.

[1] *15 N. L. R. 499.*

July 10, 1940. HOWARD C.J.—

The conviction in this case cannot be maintained. To constitute the offence punishable under section 180 of the Penal Code it is necessary that the information given should be information which the accused person knows or believes to be false. It is not sufficient that he had reason to believe it to be false or that he did not believe it to be true. There must have been positive knowledge or belief that it was false. In *Murad v. Empress*[1] Plowden V. stated as follows :—

> "It not enough to find that he has acted in bad faith, that is without due care or inquiry, or that he has acted maliciously or that he had not sufficient reason to believe or did not believe the charge to be true. The actual falsity of the charge, recklessness in acting upon information without testing it or scrutinizing its sources—actual malice towards the persons charged—they are relevant evidence more or less cogent, but the ultimate conclusion must be in order to satisfy the definition of the offence that the accused knew that there was no just or lawful ground for proceeding. It may be difficult to prove this knowledge but, however difficult it may be, it must be proved and unless it is proved the informer must be acquitted."

The accused cannot be convicted if he shows that he had reasonable grounds for believing the information to be true. He is not bound to show that it was in fact true.

The prosecution have not proved that the accused knew or believed the information which he gave to be false. In fact the evidence indicates that he had real grounds for thinking that it was true. The first false statement charged against the accused is that he stated that the District Mudaliyar, Vavuniya South, came to Rasenthirankulam on the 11th instant and included in the list for relief work all people who had large quantities of paddy. The Assistant Government Agent in his evidence stated that work had been given to S. Velupillai although he had 18 bags of paddy and to S. Kaddaiyar who had 4 or 5 bags of paddy. Also that some were given relief work in spite of their having seed paddy. The Udaiyar—Karthigesu Nagamany—in his evidence also admits that there was paddy in some of the houses where relief was given. In view of this evidence it is clear that the falsity of the statement has not been established. There may have been some exaggeration, but on the other hand it would appear that the accused had reasonable grounds for thinking that it was true.

The second false statement alleged is that the accused stated in his petition that the District Mudaliyar had given relief work to those who can live comfortably even if Government does not give one cent. If the petition is scrutinized it is clear that this was not a charge made by the accused against the Mudaliyar in his petition. The passage in the petition on which this charge against the accused is based is merely a repetition by the latter of what he said to the Mudaliyar. Moreover, the falsity of the accused's statement has not been established.

[1] *29 P: R. 1894 Cr.*

The third false statement alleged is that the District Mudaliyar has included for relief work 2 from a family of 4, 2 from a family of 3, and 3 from a family of 7. The evidence of Karthigesu Nagamany indicates that this statement was approximately correct. Knowledge of its falsity has moreover not been brought home to the accused.

The fourth false statement alleged is set out in the charge as follows :—

"(4) For all these the District Mudaliyar did not act according to the Regulations."

The Magistrate states that (4) is a general summing up of (1), (2), and (3). If (1), (2), and (3) are accepted against the accused, suffice it to say that (4) has to be accepted against him. The accused's knowledge of the falsity of (1), (2), and (3) has not been established. In these circumstances (4) stands in the same category.

In allowing this appeal I feel it incumbent on me to say something with regard to the judgment and the whole atmosphere pervading the trial of this case. The learned Magistrate seems to have regarded the weight to be attached to the evidence of various witnesses from an administrative rather than from a judicial point of view. As an instance of this attitude he accepts the evidence of the Udaiyar of Naducheddikulam apparently on the grounds that the latter could count three generations of his ancestors as having held influential and trusted offices in Government, that he holds a medal for good work and has no censures in his record of service. The evidence for the defence is rejected because it is given by witnesses taken at random from the village where the incidents connected with June 11, 1939, are said to have taken place. This is not the method that a Judicial Officer should employ to test the credibility of witnesses.

The Magistrate's strictures on a statement in the accused's petition begging the Assistant Government Agent to do away with the injustice of the subordinate headman and grant them his help can only be described as lamentable. These strictures are couched in flowery language in which are drawn inferences unwarranted and unjustifiable. It is ludicrous for the Magistrate to infer from the words "do away with the injustice" a request for the Assistant Government Agent to use his lawful power to dismiss the acting Mudaliyar or if that is not possible to recommend him for dismissal or censure or fine him.

The Magistrate in addition to misdirecting himself both on the law and the evidence has allowed evidence of previous charges against the accused to be given in evidence. It does even appear that convictions in these cases were recorded against the accused. Not content with this, the Magistrate allowed evidence to be tendered of previous petitions sent by the accused but not referring to the subject-matter of the petition which formed the subject of the charge in this case. In spite of objections by Counsel for the accused this evidence was admitted under section 146 of the Evidence Ordinance. Needless to say this section has no relevance in the matter.

The record of the case offers a good example of how a Judicial inquiry should not be conducted.

I would also refer to the concluding paragraph of Shaw J.'s judgment in *Goonetilleke v. Elisa*[1]. The present case is also one in which, in my opinion, the provisions of section 180 of the Penal Code should not have been exercised.

The appeal is allowed and the conviction set aside.

Set aside.