

1922.

Present : Porter J.SOMANADER *v.* UDUMA LEBBE.

272—P. C. Batticaloa, 11,018

Criminal breach of trust—Ordinance No. 22 of 1889—Tax collector not paying tax collected within specified date—Penal Code, s. 392.

The accused had to collect taxes for a Sanitary Board, and pay them to the Chairman before February in each year. He paid a portion, and on March 4 the Chairman wanted him to pay the balance, and he tendered a further instalment which was refused, as the whole balance was not tendered. A warrant was applied for on March 10, and on the 14th he paid the whole balance.

Held, that accused was not guilty of criminal breach of trust, as there was no dishonest intention.

The Ordinance No. 22 of 1889 did not intend to make a man a criminal who had no guilty or dishonest intent. It simply intended to facilitate proof of dishonesty, which is often difficult to prove. The word "forthwith" in the Ordinance means within a reasonable time.

THIS was an appeal from an acquittal with the sanction of the Attorney-General.

Vythialingam, C.C., for the appellant.

Arulanandam, for respondent.

July 5, 1922. PORTER J.—

The accused was charged with criminal breach of trust before the Police Court of Batticaloa. The accused was a tax collector of the Sanitary Board, and his duty was to collect taxes and pay them to the Chairman of the Sanitary Board before February in each year. It appears that for 1921 he had collected Rs. 1,514.72. He paid part of this to the Chairman of the Sanitary Board, leaving a balance of Rs. 809.99 owing. On March 4 the Chairman of the Sanitary Board wanted him to pay the balance, but he failed to pay, although there is evidence that he tendered part of the balance to the Kachcheri, but this was not received by the clerk, on the ground that he must pay up the whole balance. A warrant was applied for on March 10, and on March 14 he paid the whole of the balance. On these facts the learned Magistrate acquitted the accused. It has been argued for the Crown that by section 1 of Ordinance No. 22 of 1889 the accused was guilty of, at least, an

attempted offence. I have been referred to the case of *King v. Itagal*,¹ which was a case very much on all fours with this, but which resulted in a conviction. In the course of that judgment *BONNER C.J.* says: Ordinance No. 22 of 1889 runs as follows:—

“Whoever, being entrusted with or having the dominion of public money in his capacity as a public servant, fails forthwith to pay over or to produce, when required to do so by the head of his department or by the Colonial Secretary, the Auditor-General, the Assistant Auditor-General, or any officer specially appointed by the Governor to examine the accounts of his department, any money or balance of any money shown in the books or accounts or statements kept or signed by him to be held by or to be due from him as such public servant, or to duly account therefor, shall be guilty of the offence of criminal breach of trust, and shall on conviction be subject to the penalty provided by section 392 of the Ceylon Penal Code. It was sought to be argued that this Ordinance altered the law in respect of criminal breach of trust in its most essential particular. To constitute the offence of criminal breach of trust, you must find dishonesty. That is the essence of the offence, dishonesty. This Ordinance did not intend to make a man a criminal who had no guilty or dishonest intent. It simply intended to facilitate proof of dishonesty, which it is often difficult to prove.”

This is the reading of the Ordinance which I accept. The learned Magistrate has found as a fact in the present case that there was no dishonest intention. He received the notice from the Chairman of the Sanitary Board on March 2 to pay. He paid on March 14. The word “forthwith” in Ordinance No. 22 of 1889, I think, clearly means within a reasonable time, and apparently the accused offered to pay the balance on some day which is not mentioned between the 2nd and 14th, but this was refused by the clerk in the Kachcheri, on the ground that he must receive the whole of the amount.

I see no reason to disagree with the finding of the Magistrate in this case, and would dismiss the appeal.

Appeal dismissed.

1922.

PORTER J.
Somanader
v. Uduma.
Lobb

¹ (1902) 5 N. L. R. 311.