

1951

Present : **Basnayake J.**

DISSANAYAKE (Inspector of Police), Appellant, and
KRISHNAPILLAI, Respondent

S. C. 1,034—M. C. Point Pedro, 13,072

Giving false information to public servant—Charge—Some particulars it should contain—Ingredients of offence—Penal Code, s. 180.

In a prosecution, under section 180 of the Penal Code, for giving false information to a public servant—

Held, (i) that the charge must contain a statement of the information which it alleges the accused gave. The mere statement that the accused gave " certain information " does not satisfy the requirements of the section.

(ii) that the charge must specify the person to whose injury or annoyance the accused knew the public servant would use his lawful power.

(iii) that where the person to whom the information is given has himself no power to act on that information without the orders of a superior officer, the offence does not fall within the ambit of section 180.

APPEAL from a judgment of the Magistrate's Court, Point Pedro.

H. A. Wijemanne, Crown Counsel, with *A. Mahendrarajah*, Crown Counsel, for the Attorney-General.

H. Wanigatunga for the accused respondent.

January 30, 1951. BASNAYAKE J.—

This is an appeal by the prosecuting police officer from the acquittal of Kanavati Krishnapillai, the respondent to this appeal (hereinafter referred to as the accused), on the following charge—

“ That you did, within the jurisdiction of this Court at Point Pedro on 7.6.50 give P. C. 2934 Fernando of Point Pedro, a public servant, certain information which you knew to be false, to wit, that your cycle No. AD. 51572 was stolen by some person unknown at the court premises on 7.6.50 knowing it to be likely that you would thereby cause the said public servant to use his lawful power as a public servant to the injury or annoyance of the said unknown person and thereby committed an offence punishable under section 180 of the Ceylon Penal Code. ”

The facts shortly are as follows. On 7th June the accused made the following statement (P1) at the Point Pedro Police Station:—“ Today at about 12 noon I came to M. C. Point Pedro on my pedal cycle in order to meet Mr. Sabapathipillai, a Proctor. I left the cycle opposite the Magistrate's Court and went inside. After an hour later when I came I found the cycle missing. I searched for it till now but there is no trace of it or no information as to who removed it. There were other cycles also close to the place. I questioned from several people who were there at that time, but they do not know as to who has removed it. The description of the cycle is as follows:

“ Raleigh Standard, 22 in., repainted with black very recently. No. AD. 51572. There is a small hole in the rear mudguard and some dent marks on the front mudguard, luggage carrier with stand, fixed with a dynamo light, make not known, Brooks seat, fitted with a messenger bell, new handle grips, a mud flap fitted on to the front mudguard, valued Rs. 75.

“ This cycle was bought by me from one Karuval Ramu of Karanavai South. I produce the receipt. The dynamo light is new in working order. I do not suspect any particular person at present. This is all. ”

This statement was recorded by Police Constable 2934 Fernando. Having recorded it he conveyed the information to his superior officer, Sub-Inspector Perera, who investigated the complaint, but was unable to trace the bicycle. On 12th June, on information received from the accused, the Inspector went with him to the house of one Simon in whose house there was a bicycle which was identified as the stolen bicycle.

Simon's explanation was that he purchased the bicycle from one Paramanathan and that he had nothing to do with the accused in respect of the bicycle. Simon was arrested, the bicycle was taken into custody, and a report in the following terms was sent to the Magistrate's Court:—

" I hereby report that one Kanapathy Krishnapillai of Velvetty made a complaint on 7.6.50, that he kept his Raleigh bicycle No. AD. 51572 in front of the main entrance to the Magistrate's Court and that when he came back from the court house in about an hour's time, he found his bicycle missing. I made inquiries into the case, and on 12.6.50 traced his cycle with one Simon, son of Pallali. I hereby produce suspect Simon before Court; and move that he be remanded till 20.6.50 as inquiries have not been completed. "

On that report Simon was remanded. Thereafter on 14th June, Sub-Inspector Dissanayake made a further report in which he stated:

" The Police are not proceeding with the case. I move that respondent be released. I beg that the complainant Kanapathy Krishnapillai be noticed to appear in Court. "

There is nothing on the record to show that the accused was given the option of proceeding with the charge.

Thereafter the present prosecution appears to have been instituted. Simon and Paramanathan who negotiated the purchase of the accused's bicycle both gave evidence for the prosecution. The learned Magistrate while holding that the information given by the accused to P. C. Fernando was false to his knowledge has acquitted him on the ground that the facts do not establish an offence under section 180 of the Penal Code. He refers to a dictum of Petheram C.J. in an Indian case to which no reference is cited.

To decide the question arising on this appeal it is not necessary to seek the aid of the Indian Penal Code. The matter can be decided by reference to the section of our Code alone. Section 180 reads:

" Whoever gives to any public servant and information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees. or with both. "

An analysis of the section reveals that to come within its ambit—

- (a) a person must give information to a public servant,
- (b) the informant must know or believe the information to be false,

(c) he must intend thereby to cause or know it to be likely that he thereby will cause the public servant to whom the information is given, either—

- (i) to use his lawful power to the injury or annoyance of any person, or
- (ii) to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him.

To succeed in a prosecution under the section the prosecution must allege and prove the ingredients (a), (b), and (c) indicated above.

In the instant case the prosecution has in the first place failed to discharge the onus of stating in the charge the information which it alleges the accused gave knowing or believing it to be false. The mere statement that the accused gave P. C. Fernando "certain information" does not satisfy the requirements of the section¹. The charge is also defective in that it does not specify the person to whose injury or annoyance the accused intended or knew that he would cause P. C. Fernando to use his lawful power. An allegation as in the instant case that the accused knew it to be likely that P. C. Fernando would use his lawful power as a public servant "to the injury or annoyance" of "the said unknown person" is not sufficient. It has been so held by this Court in the case of *Ukku Banda Korala v. M. Cassim*², and I am in respectful agreement with that decision. The charge must specify the person to whose injury or annoyance the accused intended or knew he would by his information cause the public servant to use his lawful power. Neither the recorded statement nor the evidence indicates that the accused intended or knew that his information to P. C. Fernando would cause him to use his lawful power to the annoyance of Simon. It has been held³ that where the person to whom the information is given has himself no power to act on that information without the orders of a superior officer the offence does not fall within the ambit of section 180. In the instant case it appears from the evidence of P. C. Fernando that when information is received by him he has to pass it on to his superior officer without whose orders he is not empowered to go for inquiry. It does not appear that in the instant case the information has been recorded under section 121 of the Criminal Procedure Code, for P. C. Fernando is neither the officer in charge of the Point Pedro Police Station nor an inquirer.

Learned Crown Counsel cited certain Indian decisions⁴ in support of his appeal. But it is needless to consider them in view of the numerous infirmities of the prosecution.

The prosecution cannot succeed in any event.
The appeal is dismissed.

Appeal dismissed.

¹ *Ranghamy v. Rajapakse Mudalihamy*, 6 *Tambyah* 47.

² *Koch's Reports* 28.

³ *Perera v. Silva*, 4 *A. O. R.* 33.

⁴ *I. L. R.* 14 *Calcutta* 314.

I. L. R. 13 *Allahabad* 351.

⁵ *I. L. R.* 44 *Allahabad* 647.