

*Present* : Ennis A.C.J., Porter J., and Jayewardene A.J.

1982

THE INSPECTOR OF POLICE *v.* LEBBE.

375—*P. C. Matale, 19,674.*

*Public servant—Person appointed inspector of weights and measures by Assistant Government Agent—Is he a public servant?—Penal Code, ss. 19 (explanation II.), 183, and 344.*

Where a person was appointed examiner of weights and measures, and the authority was issued in the name of and signed by the Assistant Government Agent and not the Government Agent, and accused was charged with obstructing him (a public servant) in the discharge of his public functions, under section 183 of the Penal Code,—

*Held*, that he was a public servant, and that the defect in his appointment was cured by explanation II. of section 19 of the Penal Code.

THE complainant was appointed by letter an inspector of weights and measures by the Assistant Government Agent, Matale. He went to the boutique of one Lebbe to inspect weights and measures. The accused, who was a salesman, threatened to strike the complainant. The accused was convicted under sections 344 and 183 of the Penal Code and sentenced to one month's imprisonment. The accused appealed.

*E. W. Jayewardene* (with him *Arulanandan*), for the appellant.—The complainant was not duly appointed. Section 7 of Ordinance No. 8 of 1876 makes it clear that the Government Agent only can appoint a person examiner of weights and measures. The appointment produced by the complainant shows that he was appointed by the Assistant Government Agent.

[ENNIS J.—The Ordinance nowhere requires the appointment to be made in writing.]

No; but when a written appointment is produced we must base the complainant's authority to act as a public servant on that appointment.

Explanation II. of section 19 of the Penal Code does not cover a case of this kind. This explanation applies to the case of a public servant charged of an offence committed in the discharge of his duties. He should not be allowed to take shelter under a legal defect in his appointment. 8 *All. 201.*

<sup>1</sup> Explanation II. was as follows:—Whenever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant whatever legal defect there may be in his right to hold that situation.

1923.  
 The  
 Inspector  
 of Police  
 v. Lebbe

*Dias, C.O.*, for the Crown.—Explanation II. of section 19 of the Penal Code cures whatever technical defect there might have been in the appointment.

October 23, 1923. ENNIS A.C.J.—

This case has been referred to a Full Court. It is an appeal from a conviction, under section 344 of the Penal Code, for using criminal force to a public servant, and under section 183, for obstructing a public servant in the discharge of his public functions. The accused has been sentenced to one month's rigorous imprisonment. It appears that the complainant asserted that he was an inspector under the Weights and Measures Ordinance, and in pursuance of his duties went into the boutique of Uduma Lebbe to inspect the weights and measures. Uduma Lebbe appears to have complied with his request for water for the purpose of testing the measures, and to have gone away to get it, when the accused, who is a salesman in the boutique, seized some weights which the complainant was handling, and either threatened to strike him with them, or threatened to strike him with his hands. This is the act complained of. At the trial it was necessary to prove that the complainant was a public servant. For that purpose he stated on oath that he was an inspector of weights and measures for the Matale District. Later he was re-called, apparently for the purpose of allowing the accused to cross-examine him, when he produced a letter, which he described as "a letter of authority of my appointment as inspector of weights and measures." He appears to have been cross-examined with regard to his status, and it transpired that Mr. Vaughan was Government Agent in 1917. Now, the letter produced is a letter which runs :—

" I, Humphrey William Codrington, Assistant Government Agent, Matale, do hereby appoint George E. Wanigesekere an inspector of weights and measures outside the Local Board limits of Matale in conformity with section 7 of the Ordinance No. 8 of 1876," and it is signed " H. W. Codrington, Assistant Government Agent, and Chairman, Sanitary Board."

It is dated, the Kachcheri, Matale, January 8, 1917. Section 7 of Ordinance No. 8 of 1876 provides for the appointment of examiners of weights and measures, and, so much as is necessary to refer to for the purpose of the present case, says, " that examiners . . . shall be appointed by the Government Agent . . . " The document produced by the complainant clearly is not signed by the Government Agent, and does not purport to be signed by the Government Agent. But, on the other hand, section 7 of Ordinance No. 8 of 1876 does not require the appointment to be in writing. The document, therefore, does not negative

1928.

ERNEST  
A.C.J.*The  
Inspector  
of Police  
v. Lobbe*

the possibility that the complainant was duly appointed under section 7, or that he was in fact examiner of weights and measures, an office of which he had performed the functions since 1917. It seems almost impossible to believe that the Government Agent had not in fact made the appointment, particularly as examiners have to take their oaths of office, and possibly must even do so twice a year, as indicated by the Ordinance No. 4 of 1878. The complainant has stated on oath that he has in fact taken the oath of office and performed the duties of that office; and it further appears that the proprietor of the boutique accepted the complainant as an examiner of weights and measures when he came to the boutique in pursuance of his duties. In these circumstances the explanation II. of section 19 of the Penal Code would seem to cover the present case, and I would uphold the conviction.

With regard to the question of sentence, my brothers are agreed, and I am with them, that for a quasi-statutory offence, and for a first offence where in fact no harm has been done, that a fine would be ample to establish the authority of the public servant who complains. I would accordingly allow the accused the option of a fine, and amend the sentence, by making it a fine of Rs. 50, or, in default of payment, one month's rigorous imprisonment.

PORTER J.—I agree.

JAYEWARDENE A.J.—

I agree, although not for the same reasons. I think in this case we must consider the position of the complainant as an inspector who claims to base his authority to act on the authority which he produced from the Assistant Government Agent. He gave evidence and called himself an inspector of weights and measures, and he has also produced the authority. It was incumbent on him as the chief witness for the prosecution to establish that he was a public servant under section 183 of the Ceylon Penal Code. The authority which he produced rebutted his statement that he was an inspector of weights and measures, because it clearly showed that the appointment has been made by a person who had no authority to make such appointments under Ordinance No. 8 of 1876. I do not think it is possible to take into consideration the possibility that there might be an appointment by the Government Agent. If, however, that can be done, there is also the possibility to be taken into consideration that there might not be an appointment by the Government Agent. But the complainant was given every opportunity by the Court to state what his authority was, and to produce a sounder authority than the one which he produced. But he failed to do so. It is on that basis alone that the case has been decided by the Magistrate, and on that basis I must consider the case here. But taking the appointment of the complainant to be without authority, in

1923.

JAYEWAR-  
DENE A.J.*The  
Inspector  
of Police  
v. Lebbe*

my opinion, his position is covered by the explanation II. to section 19 of the Penal Code. I think the use of the words "whatever legal defect" covers the legal defect in the authority of the complainant and the fact that he has acted in the office of inspector for four years, and that at the time of the obstruction by the accused he was in actual possession of the situation of a public officer is sufficient to entitle him to maintain a prosecution under section 183. "Whatever," I suppose, means the same thing as "whatsoever," and according to a dictum of Fry L.J. in *Duck v. Bates*<sup>1</sup> it is said that "whatsoever, as a rule, excludes any limitation of qualification, and implies that the genus to which it relates is to be understood in its utmost generality." In the circumstances, I find that the explanation II. of section 19 cures the defect in the appointment of the complainant, and I think that the conclusion arrived at by the Police Magistrate is right, and the conviction must be affirmed.

*Conviction affirmed.  
Sentence varied.*

