

BRODHURST v. HENDRICK SINNO *et al.*

*P. C., Panadure, 347.*

1896.

September 21.

*Penal Code, s. 183—Voluntary obstruction of Fiscal's surveyor—Lawful orders of public servant.*

A surveyor appointed by the Fiscal to survey a land sold in execution and to make a map thereof is not a public servant nor a person acting under lawful orders.

Meaning of section 183 of the Penal Code commented upon.

THIS was an appeal from a conviction under section 183 of the Penal Code. The facts of the case appear fully in the judgment of the Chief Justice.

*Bawa*, for accused, appellant.

*De Saram*, for complainant, respondent.

21st September, 1896. BONSER, C.J.—

In this case the appellants were convicted of voluntarily obstructing the Fiscal's surveyor, a person acting under the lawful orders of a public servant, to wit, the Deputy Fiscal of Kalutara, in the discharge of his duty, and were sentenced to pay each a fine of Rs. 5, under section 183 of the Penal Code.

It appears that the appellants were defendants in an action in the Court of Requests, and that judgment was given against them. A writ of execution was taken out against their land, which was put up for sale by the Fiscal, and sold for Rs. 90 to the plaintiff. There would seem to have been some grievous mismanagement in respect of the sale, by which great injustice has been done to the appellants. The land is 30 acres in extent. The surveyor said it was worth, at least, Rs. 1,000. The purchaser says it is worth at least Rs. 750, and the Fiscal valued it at Rs. 350; yet it was allowed to be knocked down for Rs. 90.

After the sale a surveyor named Soysa received a letter from the Deputy Fiscal's Office requesting him "to survey this land with the house standing thereon, which had been sold under a writ of the Panadure Court." It concludes by stating that the survey fees had not been deposited, but that his charges would be paid by the purchaser. An illegible signature followed, with the letters "D. F." Armed with this document the surveyor went to the land, but the appellants objected to his entering on it. They did not use any violence. All that they did was that, when one of the coolies who accompanied the surveyor proceeded to cut down some brushwood, they took his katti away from him.

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The section of the Code under which they have been convicted is section 183. That section runs as follows:—

“Whoever voluntarily obstructs any public servant, or any person acting under the lawful orders of such public servant, in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.” The words “or any person acting under the lawful orders of such public servant” are an addition of local manufacture. They are not found in the Indian Penal Code; and it is very difficult to give any meaning to them. The words “in the discharge of his public functions” must refer to a public servant, because the person acting under the lawful orders of a public servant is supposed *not* to be himself a public servant, and therefore cannot exercise public functions. If he were a public servant, these added words would be unnecessary. They assume that he is not a public servant. I have some difficulty in understanding how a person can be obstructed in the discharge of another person’s public functions, but perhaps what was meant was a case like this: a Magistrate, in the exercise of his public functions, orders the arrest of a man in his presence, and calls upon the bystanders to assist him. Then, if the bystanders, in attempting to execute the order of the Magistrate, are obstructed, that may be regarded as an obstruction of the Magistrate himself.

In any case, where the person obstructed is not a public servant, it must be proved that the person obstructed was acting under *lawful* orders. Not that he believed that his orders were lawful, but that the orders were in fact lawful, and he was acting in the exercise thereof, and that what he was doing was what the man who ordered him was entitled in the discharge of his public functions to do.

Now, what was the surveyor doing in this case? He was not a public servant. He was surveying the land for the purpose of making a map to be attached, I suppose, to the purchaser’s conveyance which is required by section 286 of the Civil Procedure Code. The Fiscal had no power to survey himself, because the section says that the plan shall be made by a licensed surveyor. Therefore, there was no obstruction of the Fiscal in the performance of his public functions. It was suggested that the surveyor might be deemed to be a public servant by virtue of section 286 of the Civil Procedure Code, which provides that the surveyor is to be an officer of the Fiscal, but the concluding words of that section limit its application. He is only to be an officer of the Fiscal within the meaning of section 325, which means

that he is not to be regarded as such officer except for the purpose of that section. Section 325 provides a special remedy for any obstruction to the Fiscal and his officers. In my opinion, if these accused were guilty of any offence, they ought to have been dealt with under section 325 of the Code.

Again, the complaint is made by Mr. Brodhurst, who describes himself as Deputy Fiscal of Kalutara. We are told that the illegible signature is that of a Mr. Keuneman. It appears that Mr. Keuneman has been appointed Deputy Fiscal of Kalutara, but with this limitation, that he is only to act as such "in the absence of the Deputy Fiscal of the station on duty." It ought to have been proved that the Deputy Fiscal was absent on duty at the time that this document authorizing the survey to be made was signed by Mr. Keuneman.

But there is another objection to these proceedings. No previous sanction of the Attorney-General has been proved to have been obtained to this prosecution. Section 149 of the Criminal Procedure Code provides that no offence under this section shall be taken cognizance of by any Court, "except with the previous "sanction of the Attorney-General or on the complaint of the "public servant concerned or of some public servant to whom he "is subordinate." Mr. Keuneman has not complained, and as Deputy Fiscal he is not subordinate to Mr. Brodhurst, but to the Fiscal of the Province. The Court, therefore, had no jurisdiction in this case to entertain the complaint. The conviction should be set aside.

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