

1935

Present : Drieberg J.

ELIYATAMBY v. KATHIRAVEL<sup>2</sup>

1,023—P. C. Badulla, 15,768.

*Cheating—Redeeming article pawned—False statement in declaration—Loss to pawnbroker—Charge of giving false evidence—Ordinance No. 8 of 1893, s. 19 (1) and (2)—Penal Code, s. 190.*

Where a person redeemed an article pawned by him by making a false statement in a declaration made under section 19 (1) of the Pawnbrokers Ordinance,—

Held, that he cannot be convicted of cheating, as the pawnbroker, who acts upon such a declaration is indemnified under section 19 (2) of the Ordinance.

A false statement contained in such a declaration may be made the subject of a charge of giving false evidence under section 190 of the Penal Code without the previous sanction of the Attorney-General.

**A** PPEAL from a conviction by the Police Magistrate of Badulla.

*Gratiaen*, for accused, appellant.

*Cur. adv. vult.*

January 15, 1935. DRIEBERG J.—

Karuppiah who was about to leave for India, entrusted the appellant with an attiyal, worth Rs. 105, to be pawned. The appellant pawned it on October 13, 1933. He obtained for it Rs. 35 of which he gave Rs. 30 to Karuppiah and he retained Rs. 5. He gave the pawn ticket to Karuppiah. In February, 1934, the appellant made a declaration P 2 attested by a Justice of the Peace that he had misplaced the receipt and could not find it. This is the declaration provided for in section 19 (1) of the Pawnbrokers' Ordinance, No. 8 of 1893. He presented this declaration to the pawnbroker, paid him Rs. 37.40 and was given the attiyal. In March, 1934, Karuppiah presented the pawn ticket to the pawnbroker and found that the attiyal had been previously reclaimed by the appellant.

The learned Police Magistrate acting under section 152 (3) of the Criminal Procedure Code convicted the appellant on the following counts:—(1) Cheat and thereby dishonestly induce Mr. Thiagarajah to deliver to him an attiyal worth Rs. 105, an offence punishable under section 403 of the Penal Code. Thiagarajah is the pawnbroker. (2) Being bound to state the truth in an affidavit made a statement in it to the effect that he had lost a pawn ticket knowing it to be false, an offence under section 180 of the Ceylon Penal Code. (3) Intentionally fabricate false evidence, section 190 of the Ceylon Penal Code.

I have followed the wording of these charges as they are set out in the judgment. The appellant was convicted on these charges and sentenced to six months' rigorous imprisonment. Mr. Gratiaen contended that the evidence did not support a conviction on any of these charges.

The conviction on the charge of cheating is wrong. Under section 19 (2) of the Pawnbrokers Ordinance, Thiagarajah, the pawnbroker, was indemnified when he gave the appellant the attiyal on his giving him the declaration. He suffered no damage or harm by acting on the false representation in the declaration and he could not therefore have been cheated. The learned Police Magistrate, however, held that Thiagarajah and his master were injured in body, mind, and reputation and that this supplied the necessary element of the offence. While the matter no doubt caused annoyance to the pawnbroker it cannot be said that he was injured in mind or reputation.

In the second charge "180" is, I think, a mistake for "188", but even then there is no offence created by that section which is merely a definition of what is false evidence. The offences constituted by the giving or the use of false evidence are stated in the later sections and in this the charge was laid under section 190.

The written report by the police which initiated the proceedings, charged the appellant with two offences—one under section 197 of corruptly using a declaration which a person, viz., the pawnbroker, was authorized by law to receive, such declaration containing a false statement that the attiyal was lost ; the other was under section 386 of the Penal Code, dishonest misappropriation of the attiyal. The appellant's dealing with the attiyal after he got it on the false declaration, if believed, were sufficient for the purposes of this offence or criminal breach of trust, for he thereafter had his wife's name engraved on it and pawned it through Rengaswamy with another pawnbroker. But it is not clear whether the appellant has restored the attiyal to Karuppiah.

Evidence was recorded on these charges on March 5 and 19, 1934. At the adjourned hearing on April 16 the appellant's proctor took the objection that the sanction of the Attorney-General had not been obtained to the charge under section 197. The Magistrate upheld the objection and directed that the case should proceed only on the charges under section 386. The prosecuting police officer asked for "a date to rectify his position" as regards the first charge. I take it that he wanted time to obtain the sanction of the Attorney-General. This was allowed and the trial postponed for May 14, then postponed for want of time to May 30, and after another postponement, the trial was resumed on July 30. On this day the Magistrate noted that he thought the charge under section 386 could not be maintained and that the only charge that remained against the appellant was under section 403. He charged the appellant with offences under sections 403, 188, and 190 and declared that he would try him summarily under the provisions of section 152 (3) of the Criminal Procedure Code. The appellant's proctor was not present on this day but he was when the trial took place on August 27. No objection, however, was taken to the absence of the Attorney-General's sanction to the charge under section 190. The objection, however, was taken in the petition of appeal and before me.

Section 190 deals with giving false evidence in a judicial proceeding and with giving false evidence "in any other case" and it is within the latter class that this case falls. Section 147 (1b) of the Criminal Procedure Code says that when an offence under section 190 is "committed in or in relation to any proceedings in any court" no prosecution for it can be maintained except with the previous sanction of the Attorney-General or on the complaint of the court concerned. There is no such provision when the false evidence is given in other than judicial proceedings. The objection must therefore fail.

I can see no reason why this case cannot be brought under the latter class in section 190. We have statutory provision for the means by which a person who has pawned an article can redeem it when he has lost the pawn ticket. The declaration is made evidence on which the pawnbroker can act so as to get protection for himself. The offence might have been brought under section 197 or the appellant might have been charged under section 19 (3) of the Pawnbrokers Ordinance, but his offence also falls within section 190.

I set aside the conviction on the first and second charges, viz., under sections 403 and 188. The conviction on the third charge, under section 190, and the sentence of six months' rigorous imprisonment will stand. Subject to this alteration, the appeal is dismissed.

Varied.

