

1934

Present : Poyser J.

ZAIN v. ABEYSINGHE.

18—P. C. Galle, 2,008.

Intermeddling with suitors—Drawing up a petition for a suitor—Ordinance No. 11 of 1894, s. 5.

To draw up a petition for a suitor, at his request, regarding a pending case, does not amount to "intermeddling" within the meaning of section 5 of Ordinance No. 11 of 1894.

A PPEAL from a conviction by the Police Magistrate of Galle.

M. C. Abeywardene, for accused, appellant.

Cur. adv. vult.

February 21, 1934. POYSER J.—

The accused has been convicted under section 5 of Ordinance No. 11 of 1894, of accosting and meddling with one Tuduwe Kankanange James Appu, a suitor in Court of Requests, Galle, case No. 13,820.

The case for the prosecution was that T. K. James Appu, the plaintiff in the above case, was induced by the accused, a petition drawer, to send a petition to the Court in connection with the case and before its conclusion.

It was not alleged that the inducement took place in or within the precincts of the Court, in fact it appears from the evidence that the accused did not accost T. K. James Appu but that the latter went to the accused's office and related his grievances in connection with the case.

The accused then suggested the sending of a petition and James Appu agreed to that suggestion and instructed the accused what to include in the petition and paid him a small fee for drawing it up.

This Court has in the past found the application of this section difficult. In the case of *Mesu v. Karunaratne*¹, Wendt J. held that a person who drew up a plaint for a suitor at the suitor's request cannot be said to meddle without lawful excuse, and also stated in the course of his judgment that "this section is so vague that it has practically been a deadletter".

Jayewardene J., in *Inspector of Police, Kurunegala v. Sabapathy*², describes section 5 as "an extraordinary enactment", and in *Narayenswami v. Deogu*³, Lawrie J. appeared to consider that in order to constitute an offence under this section the attempt to meddle must be made "in a Court".

The view of Lawrie J. was not accepted in a later case, for in *Keegal v. Assen Lebbe*⁴, Wood Renton J. dissented from this decision and considered that the act of meddling need not necessarily be in a Court, and in regard to the judgment of Wendt J. he pointed out that section 5 is a part of the living law of the Colony, and that it is the duty of the Court in every prosecution which may be instituted under it to see whether it covers the facts.

¹ 9 N. L. R. 146.

² 25 N. L. R. 61.

³ 2 N. L. R. 81.

⁴ 9 N. L. R. 147.

In my opinion the principles to be followed in cases under this section are those laid down by Wood Renton J. and applying them to this case there are two points to be considered.

The first point is whether the accused "accosted" James Appu. It is clear from the evidence that he did not, for James Appu went to the accused's office and of his own accord related his alleged grievances.

The second point is whether the accused "meddled without lawful excuse". All the accused did was to draw up a petition on James Appu's instructions. I do not consider that act was "the unauthorized act of one who is busy in things that ought not to concern him". (See definition of "meddling" in judgment of Jayewardene J. (*supra*) at page 64.)

The petition drawer's occupation is a recognized one and I agree with Wendt J. (*supra*) that the Ordinance could not have been intended to prevent one person writing out for another a document which the latter could not compose or write himself.

In my opinion the facts proved in this case do not support the conviction.

The appeal is allowed and the conviction set aside.

Set aside.

