

1905.

January 27.

SUPPIAH v. KADIRKAMER.

P. C., Kurunegala, 4,624.

*Penal Code, s. 211—Offering gratification to screen offenders from legal punishment—Evidence of commission of offence by person sought to be screened.*

To justify a conviction under section 211 of the Penal Code for the offence of offering a gratification to screen a person from legal punishment for an offence, it is necessary to prove that the person sought to be screened did in fact commit the offence alleged.

Even though such person had been tried for and acquitted of such offence, it is open to the prosecution to prove that he actually committed the offence.

THE complainant in this case was a police sergeant. He charged the accused under section 211 of the Penal Code with giving him or causing to be given him a gratification of Rs. 35 in consideration of his delivering to the accused a letter which one Pona Chetty had written to one Kanapathy Pillay about some opium, and which the complainant was intending to use in evidence against Pona Chetty in a prosecution for illicit sale of opium.

The Magistrate sentenced the accused to pay Rs. 12.50 or to undergo one month's rigorous imprisonment.

He appealed.

*Wadsworth*, for appellant.—Inasmuch as the accused is charged with causing a bribe to be given to a police sergeant for screening an offender from legal punishment, a conviction is not possible unless it be proved that there was an offender and that such offender was guilty of an offence. *Queen v. Ramalingam*, 2 N. L. R. 48. No proof whatsoever exists in this case that Pona Chetty ever committed any offence.

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*Rāmanāthan*, S.-G., for respondent.

27th January, 1905. MONCREIFF, J.—

In this case the appellant was charged with causing a bribe to be given to a police sergeant for the purpose of inducing him to return a letter which was about to be used in evidence against one Pona Chetty, with the object of screening Pona Chetty from punishment in a pending case against him for illicit sale of opium. The charge is framed under section 211 of the Penal Code, which, amongst other things, provides for the punishment of people who cause gratifications to be given to a person in consideration of that person's screening any person from "legal punishment for any offence."

The Magistrate sentenced the accused to pay a fine of Rs. 12.50, or in default to undergo rigorous imprisonment for a month. It appeared that Pona Chetty was a licensed opium dealer in Kurunegala; that he was charged with selling opium in an illegal manner; that on that charge he was acquitted on the ground that, although he handed opium to Kathirgesar, no one saw Kathirgesar pay him for the opium; and that therefore there had been no sale. So far, therefore, as the case against Pona Chetty went, it was established that there was no offence, and on the authority of *The Queen v. Ramalingam* reported in 2 N. L. R. 48 it would appear that, where no offence is proved, a conviction under this section cannot take place. The judgment in that case is a Full Court judgment. Chief Justice Bonser therein said that he agreed with the District Judge, that before a conviction could take place is must be proved that the man charged was guilty of an offence; and he goes on to point out that, although that person may have been acquitted on trial, it was open to the prosecution, acting under section 211 of the Penal Code, to prove, nevertheless, to the satisfaction of the Magistrate that that person actually did commit the offence. There is no such proof in this case, and the conviction must be set aside.