

Present: Garvin A.C.J.

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UKKU RALA KORALA *v.* PUNCHI APPUHAMY *et al.*

311—*P. C. Kurunegala, 29,137.*

Fiscal—Execution of writ—Authority to Korala—Resistance to lawful authority—Ordinance No. 4 of 1867, s. 28.

Where a Fiscal had, by a written order signed by him to which was attached the copy of a writ, authorized a Korala to execute the writ,—

Held, that the Korala had authority to execute the writ within the limits of his division.

“ It would seem that in respect of the execution of a writ, which a Fiscal desires to entrust to a headman, he may adopt one of two courses : he may send a duly authenticated copy of it with an order to a headman to execute it, the headman so requested is authorized to execute it within his local limits; or he may endorse the writ with the name of any headman within his province or district and thereby constitute such headman a Fiscal's officer with authority to execute the writ within the province or district of the Fiscal, but irrespective of his own local limits.”

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

The accused were charged with resistance to the taking of property by the lawful authority of a public servant under section 181 of the Penal Code and voluntarily obstructing a Korala in the discharge of his public functions. They were convicted on both charges. On appeal the point was taken that inasmuch as the writ, under authority of which the property was taken, was not endorsed to the Korala who made the seizure, his authority was not lawful.

James Joseph, for accused, appellants.

Soertsz (with *R. C. Fonseka*), for complainant, respondent.

July 21, 1926. GARVIN A.C.J.—

By virtue of a writ issued in case No. 7,036 of the Court of Requests of Kurunegala the Fiscal caused certain movable property belonging to the first accused to be seized. After seizure by the Korala who was the officer entrusted with the execution of the writ, watchers were placed to look after the property. Soon after the seizure the two accused forcibly entered the room in which the property under seizure was placed and removed the same. Upon these facts which are clearly established these accused were brought to trial on two charges. First, they were charged with resistance to the taking of property by the lawful authority of a public servant

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punishable by section 181, and secondly, with voluntarily obstructing the Korala in the discharge of his public functions. They were convicted on both charges.

The point taken in appeal is that inasmuch as the writ under authority of which the property was being taken was not endorsed to the Korala who made the seizure this was not a case in which the taking of the property could be said to be by lawful authority. It is not denied that the writ was regularly issued. It was shown to the first accused who read it and asked for time to pay. He was therefore well aware that the property was being seized with a view to sale under the authority of a writ. He knew also that the property seized was placed in the custody of two watchers. No sooner the Korala left the first accused with the assistance of the other two accused forcibly removed the property under seizure and made the execution of writ impossible. There was ample authority for the taking of this property. The contention would seem to be that though such authority existed, the Korala was not a person empowered to take the property in pursuance of that authority and that the property was not therefore taken by a person who was vested with authority to take the same.

The Fiscal had, by a written order signed by him to which was attached a copy of the writ, authorized the Korala to execute the writ issued in the case. Section 360 of the Civil Procedure Code enacts that it shall be competent to any Fiscal to whom any writ is issued and to the Fiscal's Officer to whom the Fiscal may have entrusted the same for execution to endorse thereupon the name of any headmen, constable, or officer of Police empowered to act within such Fiscal's province or district and that the effect of such endorsement shall be to constitute such headman, constable, or officer of Police an officer of the Fiscal for the purpose of executing the writ.

Another provision of the law relating to this matter is contained in section 28 of the Fiscals Ordinance, No. 4 of 1867. The section is as follows :—

“ All native headmen shall, within their local limit be authorized and required to execute the process which may be duly sent to them for execution, and in the execution thereof they and such subordinate officers as they may employ shall be maintained and protected by law as the officers of such Fiscal although not holding any written deputation or warrant from him further than a copy authenticated by the signature of such Fiscal or Deputy Fiscal, of the process which such headmen shall and may be required to serve or execute. ”

This section places all native headmen under a duty and confers upon them a general authority to execute within their local limits all processes which may be duly sent to them. When so acting they

are entitled to be " maintained and protected by law " as Fiscal's officers so long as they hold a copy authenticated by the Fiscal or Deputy Fiscal of the process which they are required to serve or execute. The term " process " as used in the Fiscals Ordinance includes a writ.

The Deputy Fiscal who gave evidence in the case said that it was the practice to send to native headmen a copy of the writ with an order to execute the same in cases where it was thought necessary to entrust the execution of such writs to such headmen. He gave no authority for the practice, but it is manifest that it is based on section 28 of the Fiscals Ordinance.

There are therefore two enactments which enable Fiscals to procure the execution of writs addressed to them by headmen. The earlier enactment gives headmen a general authority to execute within their local limits processes duly sent to them for execution and constitute them Fiscal's officers with the protection which the law gives such officers so long as they hold a copy of the process authenticated by the Fiscal or Deputy Fiscal.

The Civil Procedure Code, which is the later enactment, says that any headman empowered to act within such Fiscal's province or district may be constituted a Fiscal's officer with power to execute a writ if the writ is endorsed with his name. It would seem that in respect of the execution of a writ which a Fiscal desires to entrust to a headman he may adopt one of the two courses: he may send a duly authenticated copy of it with an order to a headman to execute it, the headman so requested is authorized to execute it within his local limits, or he may endorse the writ with the name of any headman within his province or district and thereby constitute such headman a Fiscal's officer with authority to execute the writ within the province or district of the Fiscal, but irrespective of his own local limits.

There is no suggestion that the writ was executed outside the local limits of this Korala. He was duly authorized to execute the writ within those limits.

There is a subsidiary point taken by Counsel for the appellants with reference to the conviction entered under section 183. The person alleged to have been obstructed is the Korala. Admittedly he was not present, and the persons actually obstructed were the watchers placed by him to render the seizure effective. The accused were all aware of the facts which constituted the charges against them. Their defence was a total denial. They gave evidence themselves and stated that they did not remove the property under seizure. Under the circumstances, all that is necessary is an amendment of the conviction to bring it into conformity with the facts.

The appeals are dismissed.

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Appeals dismissed.