

1937

Present : Soertsz J.

PEIRIS *v.* FERNANDO.

682—P. C. Colombo, 9,181.

*False information—Charge under section 180 of the Penal Code—Information given in answer to questions by Police Officer—Criminal Procedure Code, s. 122.*

A charge of giving false information under section 180 of the Penal Code may be made in respect of a statement made in answer to questions put by a Police officer in the course of an investigation under section 122 of the Criminal Procedure Code.

*Jamaldeen v. Caruppen* (28 N. L. R. 458) followed; *Sub-Inspector v. Babbi* (25 N. L. R. 117) not followed.

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

C. R. de Silva (with him Barr Kumarakulasingham), for appellant.

H. W. R. Weerasooriya, C.C., for respondent.

*Cur. adv. vult.*

December 17, 1937. SOERTSZ J.—

No appeal lies on the facts in this case. The question of law, raised in paragraph 3 (a) of the petition of appeal is that "that statement which is the subject of the charge does not constitute such information as is contemplated by section 180 of the Ceylon Penal Code, inasmuch, as it was made in the course of an investigation by the Police.

Two charges had been framed against the accused, one under section 180 and the other under section 208 of the Penal Code. Both charges related to the same false information. The Police Magistrate has not expressly entered the conviction in this case under section 180 of the Penal Code, but the fact that he dealt with the case summarily indicates that he addressed himself only to the charge under that section. In the circumstances of this case, the charge under section 180 did lie, and, in my opinion was the more appropriate charge. However, it was not contended for the appellant that this was a case which should have been dealt with under section 208 and not under section 180. The only question, therefore, for consideration is whether the conviction is bad in law for the reason stated in paragraph 3 (a) of the petition of appeal. In the course of his argument, Mr. Kumarakulasingham amplified the statement in the paragraph referred to and contended that the false information the accused is said to have given was given in the course of an investigation carried out by a Police officer under section 122 of the Criminal Procedure Code and was not volunteered or given voluntarily and that, therefore, section 180 did not apply because that section is meant to provide against false information given *ex mero motu*. In support of this submission the appellant relied on the case of *Sub-Inspector v. Babbi*<sup>1</sup>. In that case Jayewardene A.J. said: "In my opinion, section 180 only applied to information voluntarily given. It does not apply to cases, where the information is disclosed in the course of the examination of a person by a Police officer.

<sup>1</sup> 25 N. L. R. 117.

or other public servant, especially when the person examined is bound by law to 'answer truly' all questions put to him". He cited a Burma case in which it was held that "the plain ordinary meaning of the expression 'given information' is to *volunteer* information, not to make statements in answer to questions". I am quite unable to follow these observations. Section 180 is couched in very clear terms "whoever gives . . . information" and, in my view, contemplates information however given, whether *mero motu* or in answer to questions and/or in the course of an investigation.

I find myself in agreement with the view of Driberg J. in *Jamaldeen v. Caruppen*, when he said, "The fact that a statement was made in answer to questions may in many cases lend strong support to a defence that it was made *bona fide* and with no ulterior motive, but I find it difficult to hold that in no circumstances can statements made under section 122 in answer to questions, form the basis of a charge under section 180".

As pointed out by Driberg J. in the last paragraph, section 122 (3) of the Criminal Procedure Code expressly states that such statements can be given in evidence in a charge under section 180 of the Penal Code. I say with great respect that I see no justification for the very limited construction sought to be placed in *Sub-Inspector of Police v. Babbi (supra)* on the last paragraph of section 122 (3) of the Criminal Procedure Code.

In my opinion, the appeal fails. I dismiss it.

*Affirmed.*

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