

1947

Present : Wijewardene S.P.J.

METHIAS HAMY, Appellant, and GUNETILLEKE, INSPECTOR OF POLICE, Respondent.

S. C. 192—M. C. Colombo, 29,504.

Elections—Personation by votes—Application for ballot paper—Preparation—Penal Code, s. 169D.

A person who applies for a voting paper in the name of any other person is guilty of the offence of personation at an election under section 169D of the Penal Code. It is not necessary that he should have obtained a voting paper in the name of the other person.

A PPEAL against a conviction from the Magistrate's Court, Colombo.

F. A. Hayley, K.C. (with him J. Fernandopulle), for the accused, appellant.

B. C. F. Jayaratne, C.C., for the Attorney-General.

Cur. adv. vult.

August 1, 1947. WJYEWARDENE S.P.J.—

The charge against the accused stated that, at an Election held under the Municipal Councils Ordinance for the return of a member to represent Maligawatta ward in the Municipal Council, the accused applied for a voting paper in the name of another voter, Richard Jayawardene, and, thereby, committed an offence punishable under section 169F of the Penal Code read with section 5 of Ordinance No. 27 of 1946. The accused was convicted on the charge and sentenced to rigorous imprisonment for six months.

A voter entering an election booth goes first to the "Direction Clerk" and gives his name to that Clerk. The Clerk gives him a chit, writing on it the serial number appearing in the Register of Voters against his name. Very often, as in this case, a voter brings a card bearing his name, issued to him by a candidate. That card is not an official document. The Clerk then writes on a chit the serial number appearing in the register against the name in the card. The voter produces that chit issued by the Clerk before the Presiding Officer. One of the "Polling Clerks" of the Presiding Officer reads out the number appearing on the chit and asks the voter his name. If the election agents of the candidates who are seated near the Presiding Officer do not question the identity of the voter, "the ballot paper Clerk" who, too, is seated by the Presiding Officer issues a voting paper to the voter.

In this case the accused entered the election booth and presented to the Direction Clerk the card P2 said to have been issued to him by one of the candidates. That card gave the name of the voter as Kahatadu Vithana Aratchige Richard Jayewardene. The Direction Clerk issued to him the chit P 1 bearing the serial number 81 corresponding to the name on the card P 2. The accused went to the Presiding Officer and handed the chit P 1 to one of the Polling Clerks. The Clerk read out the number 81 and

immediately one of the election agents challenged the accused. The Presiding Officer then asked the accused his name and he gave his name as K. V. A. Richard Jayewardene. As a result of further questioning, the Presiding Officer was satisfied that the accused was trying to personate another voter and no voting paper was, therefore, issued to him. The evidence for the prosecution established that the accused was not K. V. A. Richard Jayewardene and that the man bearing that name was a voter for this ward but was living at the time at Gal-o-ya.

The only point argued in appeal was that the evidence did not disclose anything more than a preparation to commit the offence under section 169D. It was argued that the accused did not receive a voting paper and that the accused might have changed his mind at any moment before the voting paper was issued to him.

This argument ignores the fact that section 169D makes anyone who "applies for a voting paper" in the name of any other person guilty of the offence of personation at an election. It is not necessary to prove that the person charged obtained the voting paper in the name of any other person. The evidence shows that the accused did everything that he had to do with regard to his application for a voting paper.

I hold that the Crown has proved the charge against the accused and I dismiss the appeal.

Appeal dismissed.
