

JACK ALI RAZA SHAH

v.

REGINAM

[COURT OF APPEAL, 1970 (Gould V.P., Marsack J.A., Bodilly J.A.), 9th, 13th
March]

Criminal Jurisdiction

Criminal law—giving false information to a public servant—ingredients of offence—prima facie liability where false information intentionally given to public servant with intent specified in section—question of possible privileged position—public servant—person employed in public service—person appointed “under the provisions of any Ordinance”—Penal Code (Cap. 11) ss. 4, 135 (a)—Medical and Dental Ordinance (Cap. 229) ss. 3 (2), 17 (2)—Indian Penal Code, s. 182.

Public service—giving false information to public servant—prima facie liability where false information intentionally given with intent specified in section—definition of “person employed in the public service”—person appointed “under the provisions of any Ordinance”—Penal Code (Cap. 11) ss. 4, 135 (a)—Medical and Dental Ordinance (Cap. 229) ss. 3 (2), 17 (2)—Indian Penal Code s. 182.

To establish a charge of giving false information to a public servant contrary to section 135 (a) of the Penal Code it must be shown—

- (a) That the information given was false and that the person giving it knew or believed it to be false;
- (b) That it was given to a public servant within the legal meaning of that expression; and
- (c) That it was the intention of the giver to cause the public servant to do, or to refrain from doing, something which by reason of his being a public servant he was enjoined in the course of his duty to do or refrain from doing.

The Director of Medical Services is appointed by section 3 of the Medical and Dental Services Ordinance to be Chairman of the Medical and Dental Board and is therefore a person holding an office to which he was appointed by Ordinance, within the definition of “person employed in the public service,” in section 4 of the Penal Code. Information given to the Chairman of the Medical and Dental Board when he was making a preliminary investigation of a matter which might or might not require to be placed before a meeting of the Board, was information given to him while acting within the scope of his duty as Chairman.

The scope of section 135 (a) of the Penal Code is that a person is *prima facie* liable to prosecution where he intentionally gives false information to a public servant whether in reply to a question or otherwise, with the intention specified in the section, unless the position of that person is in some way privileged in law.

In the instant case, where the appellant had made an entirely voluntary statement, entirely false and made with the intention of misleading the Chairman of the Board, a contention that the appellant was "defending" himself was unacceptable, and not within any principle of law which would narrow the scope of the section.

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Appeal against a decision of the Supreme Court dismissing an appeal against conviction in the Magistrate's Court.

K. C. Ramrakha and *S. M. Koya* for the appellant.

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G. N. Mishra for the respondent.

The facts sufficiently appear from the judgment of the Court.

Judgment of the Court (read by *BODILLY J.A.*): [13th March, 1970]—

On the 19th May, 1969, the appellant was charged before the First Class Magistrate's Court, sitting at Suva, with one count of giving false information to a public servant contrary to section 135 (a) of the Penal Code, Cap. 11, the particulars of which read as follows:—

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"JACK ALI RAZA SHAH alias JACK ALI RAZA alias JACK ALI RAZA MOHAMMED alias ALI RAZA SHAH s/o Shiu Pal alias NUR MOHAMMED, on the 14th day of February, 1969 at Suva in the Central Division, did give CHARLES HENRY GURD, a person employed in the public service, information which he the said JACK ALI RAZA SHAH alias JACK ALI RAZA alias JACK ALI RAZA MOHAMMED alias ALI RAZA SHAH s/o Shiu Pal alias NUR MOHAMMED knew to be false by stating that he had arrived in Pakistan in March, 1948 from Fiji, had enrolled as a medical student in the King Edward University College Lahore in October, 1948, and had studied at that college for five years intending thereby to cause the said CHARLES HENRY GURD to omit to institute and continue enquiries as to the falsity or otherwise of the medical qualifications of the said JACK ALI RAZA SHAH alias JACK ALI RAZA alias JACK ALI RAZA MOHAMMED alias ALI RAZA SHAH s/o Shiu Pal alias NUR MOHAMMED."

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2. The appellant pleaded not guilty to that charge but the trial Magistrate, after hearing the evidence, convicted him and passed sentence of three months' imprisonment.

3. The appellant then appealed to the Supreme Court on a number of grounds. His appeal was heard on the 3rd October, 1969, and judgment was finally delivered on 10th November, 1969, dismissing the appeal. From that decision the appellant has now appealed to this Court.

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4. Originally for the appellant seven grounds of appeal were submitted and subsequently a further three were added by leave of the Court. For convenience of reference, the grounds of appeal before us now are set out seriatim as follows:—

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"1. That the particulars, or any one of them, alleged in the particulars of offence, with which the Petitioner was charged do not constitute, in law, an offence under the provisions of section 135 (a) of the Penal Code, Cap. 11: the learned trial Magistrate erred in law in holding to the contrary.

2. That even if all the facts alleged (in the charge) by the prosecution are proved, no offence has been committed in law within the meaning and purport of section 135 (a) of the Penal Code, Cap. 11.

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3. That the appellant was convicted of telling untruths: that section 135 (a) Penal Code Cap. 11 is not intended to and does not make it an offence to tell untruths, and the learned trial Magistrate misdirected himself in law in not holding accordingly.

4. The true state of facts respecting the alleged particulars contained in the particulars of offence with which the Petitioner was charged were known to Dr. Gurd prior to the 14/2/69, and, therefore, even if the alleged particulars are all true, they do not constitute an offence under the provisions of s. 135 (a) of the Penal Code Cap. 11. A

5. That the learned trial Magistrate misdirected himself in law in not holding that one of the essential ingredients of the offence under the provisions of s. 135 (a) Penal Code Cap. 11, to wit: the intention to mislead—was not proved beyond reasonable doubt by the prosecution. B

6. There was no evidence to support a finding that Passport No. 18068 was issued to the Petitioner: the learned trial Magistrate misdirected himself in law in holding to the contrary.

7 That in law, section 135 (a) of the Penal Code Cap. 11 creates an offence which is limited to persons who themselves, of their own volition, make statements to the Authority, but does not cover cases where the Authority is making investigations from suspected persons.” C

Additional grounds—

“ 1. That Charles Henry Gurd was a person in authority at the time that he interrogated the appellant and allegedly obtained the information referred to in the charge and in consequence, the information that he obtained was inadmissible as having been obtained in breach of the Common Law and was not voluntary. D

2. That Charles Henry Gurd was at the material time referred to in the charge not a public servant, but Chairman of the Medical and Dental Board acting in a *quasi-judicial* capacity, and therefore no offence contrary to section 135 (a) of the Penal Code Cap. 11 had been committed.

3. Charles Henry Gurd questioned the appellant in pursuance of the Medical and Dental Practitioners Ordinance, and not in order to obtain any information from him, and therefore the offence charged was not made out in law.” E

5. Before considering the merits of the grounds of appeal as argued before us, it is appropriate to set out clearly the issues involved in the offence charged.

In order to establish a charge under the section in question it must be shown:

A. that the information alleged to have been given was false and that the person giving it knew or believed it to be false. That is a question of fact to be determined on the evidence. F

B. that the false information was given to a public servant within the legal meaning of that expression. That is a question of mixed fact and law.

C. that when that information was given it was the intention of the giver to cause the public servant to whom it was given to do something or to refrain from doing something which by reason of his being a public servant he was enjoined in the course of his duty to do or to refrain from doing, as the case may be. That is a question of fact to be determined from the evidence and necessary inference. G

Those are the proper considerations involved and nothing more.

6. The grounds of appeal were not argued before us seriatim and some of them were not argued at all but none of them was specifically withdrawn. It behoves us therefore to consider them all whether they were argued or not. We propose to consider them in relation to the issues outlined above. H

7. The only ground of appeal which may be said remotely to bear upon issue A above, namely the falsity of the information given, is the original ground 6. It is there suggested that there was no evidence other than hearsay to support the issue of Passport No. 18068 to the appellant and so it was argued. This question is in fact quite immaterial and we need express no opinion upon it. There was the direct evidence of Suraj Kali Mohammed, (P.W. 2) the appellant's former wife, to the effect that the appellant in fact left Fiji on the 10th April, 1951, and that in 1948 he was working in Ba as a chemist, as well as the evidence of the appellant himself that he left Fiji about April, 1951. There was thus ample evidence to support the Magistrate's finding of fact as to the date of the appellant's departure quite apart from any reference to the passport. Indeed no attempt was made to argue that the trial Magistrate had erred in respect of the weight of evidence on this issue. We find no substance in ground 6 of the original grounds of appeal.

8. As regards issue C, namely that the information given must be given with a certain intention. The original ground of appeal 5 and possibly also 4 are directed to this issue. Neither of these grounds were specifically argued, but we find no substance in either of them in any event. The question of the appellant's intention when he gave the false information is a question of fact to be deduced from the circumstances proved. A second appeal to this Court lies only upon questions of law, but we would observe that the trial Magistrate, in our opinion, drew a proper inference, and indeed the only inference he could possibly have drawn. We find it difficult to understand ground 4. What difference can it make to a charge under section 135 of the Penal Code if the public servant to whom false information is intentionally given with the purpose of deceiving him, already knows it to be false? It is the intention of the person giving the false information which constitutes the basis of the offence, not the knowledge of the recipient. We therefore also find no substance in either of those grounds of appeal.

9. The remaining grounds of appeal are all directed in one way or another to issue B. The grounds of appeal fall into two classes:

Grounds 2 and 3 of the additional grounds of appeal face the issue squarely—was Dr. Gurd, when the information complained of was given to him, a public servant or was he not; and if he was a public servant, did he receive that information in his capacity as a public servant or in some other capacity. Ground 1 of the additional grounds of appeal and grounds 1, 2, 3 and 7 of the original grounds of appeal are all directed, and were so argued, to the scope and extent of section 135 (a) of the Penal Code. In other words it was argued that not all false information given to a public servant with the intention specified in the section will constitute an offence against the section.

10. We shall deal first with grounds 2 and 3 of the additional grounds of appeal.

11. It was argued that Dr. Gurd, although he was appointed to the post of Director of Medical Services was never appointed to be Chairman of the Medical and Dental Board. He sat as Chairman *ex officio*. We find no substance in that contention at all. Section 3 of the Medical and Dental Ordinance (Cap. 229) establishes the Board and subsection (2) thereof reads as follows:—

“(2) The Board shall consist of—the Director of Medical Services, who shall be Chairman, and three registered medical practitioners to be appointed by the Governor in Council . . . ”

The definition of the phrase “person employed in the public service”, which is used in section 135 (a) of the Penal Code, is contained in section 4 of the Penal Code and, so far as relevant, reads—

“ “ person employed in the public service ” means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely—

- (i) any civil office including the office of Governor, the power of appointing a person to which or of removing from which is vested in Her Majesty or in the Governor or in the Governor in Council or in any public Commission or Board; or
- (ii) any office to which a person is appointed or nominated under the provisions of any Ordinance or by election;.....”

It is perfectly clear that the Director of Medical Services is appointed by the Ordinance itself to be the Chairman of the Board and in our opinion it is none the less an appointment “ under the Ordinance ” because it can be described as *ex officio*. Only the remaining three members need to be appointed by any specific act of appointment, namely by the Governor in Council. It was also argued that even if in his capacity as Director of Medical Services Dr. Gurd was a public servant, when he sat in the Chair of the Medical and Dental Board he shed that capacity. We consider that the definition already quoted covers the point. The Medical and Dental Board is a statutory body created by Ordinance to which the Chairman is appointed by the Ordinance itself, and consequently under the provisions of the Ordinance; the remaining members are appointed thereto also under the provisions of the Ordinance. Not only was the Chairman therefore in his capacity as Chairman a public servant but so also were each of the members in so far as they acted for the purposes of the business of the Board. We find no merit in grounds 3 and 4 of the additional grounds of appeal.

12. That leaves what appears to us to be the real contention of the appellant. It is argued in substance that no matter how false was the information given, in the circumstances of this case it could not constitute an offence against section 135 (a) of the Code.

13. The circumstances may be stated briefly as follows:—

In January, 1969, the appellant called personally upon Dr. Gurd as Chairman of the Medical and Dental Board and applied for registration as a medical practitioner in Fiji. He produced certain documents and gave certain information as a result of which he was given a form of application for registration to complete and the matter was referred to the Board. In due course he was registered and a certificate to that effect was issued to him on the 30th January, 1969. It is to be noted that he did not apply to the Secretary of the Board but to the Chairman himself. After the issue of that certificate Dr. Gurd made certain enquiries at the Fiji School of Medicine and as a result of that certain doubts were raised in his mind as to whether or not the medical educational qualifications of the appellant entitled him to registration in Fiji. He therefore invited the appellant to see him again on the 14th February, 1969. The appellant came to see him and Dr. Gurd told him that he had received certain information about his medical education which it was his, Dr. Gurd's duty to investigate. He then told him the information which he had received, namely that the appellant had been a student at the Central Medical School at Suva between January, 1945 and January, 1948, whereupon the appellant gave him the information complained of in this charge. Except by implication, so far as the evidence shows, the appellant was not even asked for an explanation, but immediately replied that Dr. Gurd's information was incorrect and proceeded to make his statement as to the facts which the Magistrate has found to be untrue.

14. It has been argued that Dr. Gurd had no business to interview the appellant at all, that it was the duty of the Board only, that the correct procedure was for the Secretary to have summoned a meeting of the Board and the Board to have exa-

A mined the appellant on oath before it under section 17 (2) of the Medical and Dental Practitioners' Ordinance and that in doing otherwise Dr. Gurd was acting outside the scope of his duty as Chairman of the Board. Had Dr. Gurd acted as it is above argued that he ought to have done, there could have been no possible objection to his doing so, but we can equally see no objection to his having acted in the way he did. He was merely, in his capacity as a public servant, whose duty it was to exercise the function of Chairman of the appropriate Statutory Board, inviting a preliminary explanation of a matter which might or, according to the explanation, if any, might not be a matter which would need to be placed before a meeting of the Board. We are asked to infer from the mere fact that on the same day as Dr. Gurd interviewed the appellant, namely 14th February, 1969, the police took out a search warrant with a view to the investigation of a possible offence committed by the appellant under section 345 of the Penal Code, that Dr. Gurd was in fact assisting the police in a criminal investigation. We can find nothing in the evidence to justify any such inference. We are asked also to infer from the fact that Dr. Gurd, having heard the explanation of the appellant, sought the advice of the Attorney-General the following day, that Dr. Gurd as Chairman of the Board had already prejudged the matter. We also cannot draw that inference. The facts stated by the appellant when compared with the records of the Central Medical School, Suva, or the Fiji School of Medicine, as the case may have been, were at variance. We can see nothing wrong in Dr. Gurd seeking legal advice. Indeed, we consider that if he had any doubt in his mind as to what course he should take it was a wise course to seek that advice.

D 15. Finally it was argued that, be the above as it may, whatever the appellant told Dr. Gurd could never be the subject of a charge under section 135 (a) of the Penal Code for the reason that the appellant was defending himself and in substance therefore he was entitled to say what he liked in his own defence whether the truth or otherwise. It was submitted that once a person is suspected, whether of a criminal offence, or some other inconvenient circumstance analogous thereto such as an offence against discipline then he is entitled to lie as he pleases with impunity so far as section 135 (a) of the Penal Code is concerned. We can find no direct authority as to the scope in this respect of section 135 of the Code nor was any cited to us in argument but our attention was drawn to various passages from *The Law of Crimes by Ratanlal and Dhirajlal Thakore* (20th Ed.) at page 443 et seq. in relation to the application of section 182 of the Indian Penal Code which is similar in purport to section 135 of the Penal Code of Fiji, and also to certain passages in the *Penal Law of India by Sir Hari Singh Gour* (7th Ed.) Vol. I at page 862 et seq. where the learned author comments upon the same section. It would appear from those two text books that the matter is by no means settled even in India except to the extent that answers given to police officers in his own defence by a person accused of a crime appear to have been held not to fall within the section.

E F 16. We consider that the scope of the section may be defined as follows. A person is *prima facie* liable to prosecution under section 135 of the Code in all cases where he intentionally gives false information to a public servant whether in reply to a question or otherwise with the intention of causing that public servant to act or refrain from acting in the course of his duty unless the position of that person is in law privileged in some way.

G H 17. Turning back to the case in hand. This was not a criminal investigation. It was merely a perfectly proper enquiry put to the appellant by the Chairman of the Medical and Dental Board with a view to elucidating an apparent discrepancy concerning the appellant's educational qualifications for registration as a medical

practitioner in Fiji. There was no obligation upon the appellant to reply or to make the reply which he did. It was a perfectly voluntary statement, and it was entirely false and made with the intention of misleading the Chairman of the Board. We think that this is exactly what the provisions of section 135 of the Code are designed to prevent. We cannot find any principle of law which would in the circumstances of this case narrow the clearly wide scope of section 135 of the Code. We think that the appellant's contention that he was defending himself places far too wide an interpretation on the meaning of "defence" in this connection and we cannot accept it.

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18. Lastly it was argued that the statement in any event was inadmissible for the purpose of criminal proceedings and evidence could not be given of it because it was made to a person in authority. Even assuming that Dr. Gurd in his capacity of Chairman of the Board were to be regarded as a person in authority there is not a shred of evidence from which it may be inferred that the statement was other than entirely voluntary.

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For the above reasons we find that ground 1 of the additional grounds of appeal and grounds 1, 2, 3 and 7 of the original grounds of appeal also fail, and we dismiss the whole appeal accordingly.

Appeal dismissed.