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**Bhondu Vs. Rex**

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**SooperKanoon Citation** : sooperkanoon.com/465438

**Court** : Allahabad

**Decided On :** Oct-25-1948

**Reported in** : AIR1949All364

**Appellant** : Bhondu

**Respondent** : Rex

**Judgement** :
ORDER

1. The following questions have been referred to us for decision by a learned single Judge of this Court:

1. When does an investigation by the police start? Is it immediately after the registration of the case by the police or when it starts to ascertain the actual offence and the culprits thereof?

2. If after the first information report the complainant hands over a list of the stolen property to the Sub-Inspector as soon as he arrives on the spot for investigation, is such a list inadmissible in evidence under Section 162, Criminal P.C.?

2. The facts necessary for a proper decision of the questions involved are these. On the night between 13th and 14th August 1946, a burglary took place at the house of one Mohammad Yusuf in the town of Saidpur, district Ghazipur. He discovered it in the morning and sent a slip to' the police informing it of the theft. No suspicion was expressed against any one in the slip; nor was the list of

property stolen given in it. It was as follows:

ToThe Sub-Inspector of Police Police Station Saidpur. Sir,Compliments. A theft was committed in my female apartment last night. Four or five boxes are lying open in a field to the east of the house. The articles with cash and. ornaments, kept in them, are missing. Submitted for information. Dated the Sd. Muhammad Yusuf Abbasi,14th August 1946, in autograph.

3. After making this report Mohammad Yusuf prepared a list of stolen property which is Ex. P-2. Mohammad Yusuf stated that he was taking the list to the police station when the Sub-Inspector arrived and then he gave the list to him. The Sub-Inspector also corroborated the statement of Mohammad Yusuf and stated that the list had been handed over to him when he went to the village for investigation. Thus, the list was given to the Sub-Inspector before he actually recorded the statement of any witness in connection with the investigation of the case. The question is whether the list was inadmissible because it had been given to the police officer after the first information report had been lodged and after the police officer had started from the police station and had gone to the village for investigation of the crime.

4. The relevant provisions of the Code of Criminal Procedure may now be described. Section 154, Criminal P.C., provides for the lodging of the first information report relating to the commission of a cognisable offence with a police officer in charge of the police station. This information is clearly admissible in evidence. When this information has been lodged, the police officer in charge of the police station is authorised under Section 156, Criminal P.C., to investigate into the offence. Section 160 of the Code empowers a police officer making an investigation to require, by an order in writing, the attendance before himself of any person being within the limits of his own or adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case and such person shall attend as so required. Section 161, Criminal P.C., empowers the police officer making an investigation to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Section 162, Criminal P.C., prohibits the use of statements made by any person to

a police officer ' in the course of an investigation under this Chapter,' for any purpose save as provided in the section at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The section then goes on t6 provide for such cases in which such statements can be used in Court. It is not necessary to detail those provisions as we are not, concerned with them in the present case. Now 'investigation' is denied in Section 4 (1)(e), Criminal P.C., as follows:

Investigation includes all the proceedings under the Code for the collection of evidence conducted by a 'police officer or by any person other than a Magistrate who is authorised by a Magistrate in this behalf.

Though this definition cannot be said to be exhaustive, nevertheless an investigation into an offence must start with some step in the nature of an inquiry into the commission of the offence for the purpose of finding out the circumstances in which an offence was committed and the evidence against the accused. Between the first information of the commission of an offence to the police and the first step taken by the police in the investigation of that offence, there will, naturally, elapse some time. If during this interval some thing, which may legitimately be considered to be information supplemental to the first information, is lodged with the police, it need not necessarily be considered to be a statement made during the course of investigation. If once an investigation has actually started, all statements made to the police will naturally [fall within the purview of Section 162, Criminal P.C., land will not be admissible in evidence except [to the extent mentioned in that section.

5. The question is, when does an investigation start? In our opinion it does not start by the mere fact that a first information has been lodged with the police. The police may choose to investigate into the offence either immediately or after some time, or may waif for further information before it makes up its mind to (investigate into it. It cannot, therefore, be said that an investigation starts as soon as a first [information has been made to the police, An investigation must be said to have commenced (only when a step in the ascertainment of the [actual offence and of the culprits thereof is taken. The mere fact that an investigating officer starts from

the police station to the scene of occurrence is not commencement of the investigation. The first information lodged with the police may not be a complete document as will be the case when in the case of a robbery or dacoity the list of the stolen goods is not mentioned therein. Such a list supplementing the first information report would be merely a part of that report and not a part of the investigation. Several cases have been cited before us in this connection.

6. In the case of Kalia v. Emperor A.I.R. (12) 1926 Cal. 959, the facts are not clearly stated and it does not appear whether the list of the stolen property was given to the police officer before he had taken any step in the collection 'of evidence in relation to-the commission of the crime. The same criticism-applies to Fulbash Sheikh v. Emperor : AIR1929 Cal418 and to Sucha Singh v. Emperor A.I.R. (19) 1932 Lab. 488.

7. On the other hand, in Autar v. Emperor A.I.R. (18) 1931 Oudh 74 a brief report of a dacoity was made by the chaukidar to the police and when the Sub-Inspector went to the village, he was handed over a list of property alleged to have been stolen in the dacoity. It was held that such a list having been given before the actual investigation began, it was not a statement made to police officer during the course of investigation, and that a list of this kind may be recorded as an addition to the first report. This ruling was followed in Emperor v. Narain A.I.R. (18) 1931 Oudh 83. In that case a dacoity took-place on the night of 2nd and 3rd January 1930, and was reported at 5 A.M. on 3rd January. A police officer went at once to the village and in his presence certain lists of property were prepared. The list could be completed only by 6th January. Some sort of an investigation was, however, carried on during these two days. Their Lordships observed that by 5th January

the investigation was merely in a preliminary stage and these two lists were additions to the first report which was necessary for the proper presentation of the case by the complainant to enable the police to make full investigation, and that these lists were prepared before the investigation actually began and could not be excluded from evidence as being statements made to a police officer during the course of investigation.

8. We need not, in the present case, go tot the extent to which the learned Judges went in the last mentioned case. It is doubtful if lists of stolen property given after some sort of investigation had commenced would be admissible. We are, however, concerned with a case in which the list of property was given to the police officer as the very first thing after he went to the village and before he recorded the statement of any witness or took any other step in the investigation of the crime. In Amrit Lal v. Emperor A.I.R. (20) 1933 Lah. 987 at p. 990 a similar view was ex. pressed. In that case a suggestion was made that such a list may be admissible under Section 158 or Section 159, Evidence Act. We do not think, however, that a statement, otherwise falling under Section 162, Criminal P.C. would become admissible merely because it can be brought under Section 158 or Section 169, Evidence Act. The provisions of Section 162, Criminal P.C., are specific provisions on the admissibility of statements made to the police and control the general provisions contained in Sections 158 and 159, Evidence Act.

9. Learned Counsel appearing for the applicant has strongly relied upon two recent cases. One is a case of their Lordships of the Privy Council, Zahiruddin v. King-Emperor A.I.R. (34) 1947 P.C. 75 and the other is a case of our Court reported in Moti Singh v. Emperor : AIR1948 All289 . In the Privy Council case the question was whether the testimony of a witness, Mr. Roy, who had given a signed statement to the police contrary to the provisions of Section 162, Criminal P.C., and had also made substantial use of it while he was giving evidence, could be taken into consideration at all. The written statement was given by Mr. Roy to the police during investigation as was stated by the trying Magistrate at the end of Mr. Roy's examination-in-chief. It was given three months after the events with which it dealt, in the course of the investigation of the alleged offence. Their Lordships of the Privy Council stated:

The statement was made to the police three months after the events with which it dealt, it was signed by him and it was made to the police in the course of their investigation.

Thus, the fact that the statement of Mr. Roy was given during investigation was not a fact in controversy in that case, and, as such, there could not be any doubt that

the statement was not admissible and could not be used to refresh the memory.

10. In the case reported in Moti Singh v. Emperor A.I.R. (35) 1948 ALL. 289 (ubi supra) the question was whether a statement of a witness recorded by the Sub-Inspector on arrival in the village, after the first information had been lodged with him, was admissible as the first information of the occurrence. The Chaukidar had already informed the Sub-Inspector about the commission of the crime and had also given him the names of the culprits. The report of the Chaukidar was, however, not recorded by the Sub-Inspector. It was held that the mere fact that the report of the Chaukidar was not recorded, would not enable the police to treat the subsequent statement of a witness as a first information report. We entirely agree with the decision in that case, but it should be observed that that was a case in which the question was with regard to a statement which could not be properly treated as part of the first information report as the first information report was complete by itself. There is a vital difference between such a statement and a mere list of the stolen articles supplied to a police officer.

11. The answers to the question referred to us are, therefore, as follows. The answer to the first question is, that an investigation by the police does not always start immediately after [ the registration of the case by it. It commences with the first step taken by the police towards ' the ascertainment of the offence and the culprits thereof. The answer to the second question is i that if after the first information report the complainant hands over a list of the stolen property to the Sub-Inspector, as soon as he arrives on the spot for investigation, such a list is not covered by Section 162, Criminal P.C., but is a part of the first information report under Section 154, Criminal P.C., and is admissible in evidence.

12. Let the case go back to the learned single Judge making the reference.

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