Jhumarlal Vs. the State

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Court : Rajasthan

Decided On : Feb-15-1957

Reported in : AIR1957Raj185

Judge : Modi, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 162, 162(1), 172 and 173; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955; Evidence Act, 1872 - Sections 145; Indian Penal Code (IPC), 1860 - Sections 182

Appeal No. : Criminal Revn. No. 45 of 1956

Appellant : Jhumarlal

Respondent : The State

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : Mahaveer Singh Gehlot, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Modi, J.

1. This is a revision by the accused Jhumarlal and raises an interesting point of procedure relating to the right of an accused to obtain copies of certain statements made to the police under Section 162, Cr. P. C.

2. The accused petitioner is being prosecuted under Section 182. I.P.C., in the court of the Second Class Magistrate, Pali. The allegation against him is that he had made a report of theft against certain persons in the police, and this report was investigated, and the police came to the conclusion that it was false and thereby he had rendered himself liable to be proceeded against under Section 182. I. P. C. Consequently, thp Sub-Inspector in charge of police thana, Pali, filed a complaint against the petitioner in the court of the First Class Magistrate. Pali, on the 17th October, 1955, under Section 182. I.P.C.

This complaint was thereafter transferred to the court of the Second Class Magistrate, pall.

The accused was examined on the 1st December,1955. and the case was posted for evidence for the 10th December, 1955. On the 1st December,1956. the petitioner applied for being furnished with copies of the statements of the witness or witnesses who had been examined by the police during the course of investigation in connection with the theft case. This application was rejected by the Magistrate. Thereupon the accused went in revision to the Sessions Judge, Pali, who also maintained the order of the trial court, The present revision has been filed against that order.

3. Learned counsel for the accused raised two contentions in this Court, The first was that the decision of the two courts below declining to give copies of the statements of witnesses' who had been examined by the police in connection with the report of theft filed by him (and which according to him must have led to the filing of the present complaint against him in the court of the Magistrate) was quite wrong, and, secondly, that the complaint filed against him did not fulfil the ingredients of Section 182, I.P.C, at all, and should not, therefore, have been entertained by the Magistrate.

4. I shall take up the first contention first. The argument of learned counsel for the petitioner on this point was that it must have been the outcome of the investigation made by the police in the theft matter that the police eventually came to the conclusion that his report was false; and, therefore, the petitioner was naturally anxious to obtain copies of those statements to enable him to prepare his defence, and it was further argued that the petitioner was entitled to get such copies under the provisions of Section 162, Cr. P. C. It has to be remembered in this connection that at the time the application in question was made, Section 162 stood in its unmodified form as follows;

'Statements to police not to be signed; use of such statements in evidence.-

162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in there-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination :

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.'

(Sub-section 2 is not relevant)

This section occurs in Chapter XIV, which begins with Section 154. Section 154 provides that the every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and every such information, whether given in writing or. reduced to writing, must be signed by the person giving it, and its substance recorded in a, book prescribed for the purpose. Section 155 relates to any information filed or given in a non-cognizable case and provides that no police officer shall investigate such a case without an order of a Magistrate competent to try such case or commit the same for trial.

Then comes Section 156 which provides, broadly speaking, that an officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case within the jurisdiction of such station. The next important section is Section 161 which authorises a police officer making an investigation under this chapter to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Then comes Section 162 which I have already quoted in extenso above. The question is whether this section can be of help to the accused petitioner in obtaining the copies which he seeks.

A careful analysis of the section, to my mind, clearly shows that before an accused can claim copies of the statements of witnesses examine by the police, it is necessary that such witnesses must have been examined with respect to the investigation of the offence which is under trial. In other words, the offence under investigation whereat the statement was made must be the offence in connection with which the inquiry or trial is being held. This is made clear by the expression 'nor shall any such statement.....be used for any purpose..... at anyinquiry or trial in respect of any offence under investigation at the time when such statement was made.'

Again the proviso begins by saying 'when any witness is called for the prosecution in such inquiry of trial' that is the inquiry or trial in respect of an offence which was under investigation at the time when such statement was made. It is only when this condition is fulfilled that the accused is entitled to be furnished with a copy of the statements made by witnesses to the police. If this is the correct analysis of

Section 162 in so far as it is relevant for the present purpose, as I think, it is, then I am clearly of opinion that the request of the accused in the present case to be furnished with the copies of the statements made to the police does not merit acceptance.

The offence under investigation here was the alleged offence relating to theft, whereas the accused is being tried for a distinct offence under Section 182, I. P. C. The first offence was cognizable. The second is non-cognizable. The first offence was one with respect to which the police had the right and was in duty bound to investigate in law. The second offence for which the accused Is being tried is non-cognizable and the police could not investigate it without the order of competent Magistrate. It cannot, therefore, be postulated of such a case that the statements of the witnesses, whose copies are being sought, were recorded by the police at an investigation In relation to the very offence for Which the accused is being tried, and that being so, Section 162, in my opinion, is of no help to the accused.

The contention of learned counsel for the accused that the investigation for the offence under Section 379 was also an investigation for the offence under s. 182 seems to me to be an over statement of the correct legal position. The offence under Section 182 was non-cognizable, and therefore, could not have been investigated by the police without the order of a Magistrate, and there is nothing to show that it was so investigated. This contention, therefore, has no force.

5. It was next contended that Section 182 is not an offence by itself but is merely the offspring of the investigation made into the earlier report as to theft and, therefore, the statements of witnesses examined by the police during such investigation fall within the ambit of the words 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made' occurring in Section 162, Criminal P. C. This contention in my opinion has no substance either. An investigation into a case of theft is one thing. The complaint of the police to the Magistrate that the informant made such a report knowing or believing it to be false and intending thereby to cause or knowing it to be likely that he will thereby cause the police to use its lawful power to the injury or annoyance

of the person accused of such offence (which, is the gist of an offence under Section 182) is quite another. The ingredients which go to constitute the two offences are quite distinct. Therefore to say that Section 182 does not amount to an offence in itself as an independent entity and that it is indistinguishable from the offence, investigation into which has led to a dropping of that case and to a subsequent complaint by the police under Section 183, I. P. C., against the person who had filed a report in the police (which they consider is false within the meaning of Section 182) is to say something which is quite untenable.

In the first case the investigation is in a case in which some other persons stood accused of an offence, in the other case the person who was himself the aggrieved person in the first case stands accused of having made a false report though it is true that the false report was in connection with the first cass. Again, this latter offence was one which the police without the order of competent Magistrate never could investigate according to law or did investigate. Consequently, I overrule this contention as unsubstantial.

6. Learned counsel for the accused placed his reliance on -- 'Dinanath Sahay v. Emperor', AIR 1939 Pat 174 (A). In that case the accused was being tried under Section 182, I. P. C., in the Court of a Magistrate. He made an application asking for a copy of the final report submitted by the police in the case and also for the copies of the witnesses examined by the police. The Magistrate ordered that the final report be shown to the accused, and thereafter the witnesses for the prosecution were examined and cross-examined by the accused without his being in possession either of a copy of the final report or of the statements of the prosecution witnesses.

The Magistrate eventually convicted the accused under Section 182 and the accused preferred an appeal which was also dismissed. The accused then went to the High Court in revision. The Bench held that the procedure followed by the Magistrate was wrong and the case was remanded with a direction that the accused be furnished with the copies of the statements of the witnesses before the police, and of the final report, and then retried according to law.

From a perusal of the report, it appears to me that the entire controversy in this case in the High Court centred on the point that the accused had not made his request either orally or in writing to the Magistrate at the proper juncture. It was contended on behalf of the Crown that the accused should have renewed his application after each witness for the prosecution had entered the box and had been examined in chief. This contention was of course repelled, and, in my opinion, rightly.

The question, however, does not appear to have been examined from the angle that the offence for which the accused was being tried was not the same as respects which the investigation had been made by the police. The language of Section 162 does not appear to have been analysed before the High Court from this standpoint, and it was more or less assumed that such copies were permissible according to the provisions of Section 162, Criminal P. C. This case, therefore, cannot be taken to be any authority for the purposes of the contention which has been raised before the courts below and before me in the present case.

7. The view which I have taken above Is, on the contrary, fully supported by a decision of their Lordships of the Supreme Court in --'Purshottam v. State of Kutch', AIR 1954 SC 700 (B). There the accused was being prosecuted under Section 384 of the Indian Penal Code for an offence of extortion. His prosecution appears to have been the result of information filed by the accused himself that he had been robbed of a certain sum, and that in course of the robbery, he had been assaulted. This information was duly registered and investigated. It was in the course of that investigation that the police came to know that the extortion was committed by the accused.

The police consequently filed a complaint in the court of a Magistrate against the accused, and he was convicted. One of the objections to the trial which was canvassed before the Supreme Court was that the statements of the witnesses examined during the course of the investigation had not been furnished to the accused, and, therefore, the trial was illegal. This contention was repelled by their Lordships of the Supreme Court in the following words:

'The statutory right of the accused to be furnished with statements relates to a trial in respect of the very offence which was investigated and does, not apply to a trial for a non-cognizable offence in respect of which there has been in fact no investigation. The proviso to Section 162 (1) which gives the right to obtain copies relates to 'such inquiry or trial' i.e., to 'enquiry or trial of any offence under investigation (under this chapter) at the time when the statement was made.' '

It was also contended before the Supreme Court that the investigation that had taken place on the complaint of the accused was in fact and in substance an investigation with reference to the offence of extortion for which the appellant was being tried. This argument was also repelled, inasmuch as, in the view of their Lordships, there was no justification in fact for the contention that the investigation on the complaint of the accused was also an investigation for the offence of extortion. It was, therefore, held that there was no foundation laid in the evidence for the larger question, namely, whether the statutoryright under Section 162 can be held to apply to a case where there was in fact and in substance an investigation also in respect of a non-cognizable offence though the investigation purported to be confined to the cognizable offence and the question was left open.

So far as the present ease is concerned also, there is nothing to show on this record that the investigation into the case of theft was in fact and in substance also an investigation into the ease of the offence for which the accused is being tried. In this view of the matter, I have no hesitation in coming to the conclusion that the proviso to Section 162 (1), according to which the accused claims his right to obtain copies of the statements in question, relates to the inquiry or trial of an offence which was under investigation at the time when the statement was made, and does not relate to a different offence which could not have been made the subject-matter of investigation by the police (without authority from a Magistrate) being a non-cognizable offence and which was in fact not so investigated.

8. It may be pointed out that Section 162, Criminal P. C., has since been amended under the Criminal P. C., Amendment Act, 1955, (No. XXVI of 1955), and the provision in Section 162 in so far as it related to the accused's right to obtain copies of the statements made by witnesses to the police has been deleted from

there and provided for under Section 173 of the Code (See Sub-sections 4 and 5).

That, however, in my opinion, does not change the legal position in any material respect from that which I have discussed above.

Section 173 provides that every investigation under Chapter XIV shall be completed without unnecessary delay and the officer in charge of the police station shall forward his report to the Magistrate, and after forwarding his report and before the commencement of the trial or inquiry, the police officer shall furnish the accused a copy Of the report and of the first information and of all other documents on which the prosecution proposes to rely including the statements and confessions under Section 164 and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses, and then certain safeguards are provided with which we are not concerned but which also stood provided under Section 162 as it existed before.

It is clear that the right to obtain copies under Section 173 can be held to be applicable only in connection with an offence which has been the subject of investigation by the police, and in respect of which the accused has been challaned in due course, and it cannot relate to a non-cognizable case which has not been the subject-matter of any investigation at all but for which the accused is being tried. The petitioner, therefore, cannot be entitled to obtain the copies which he seeks under the provision of Section 173.

And so far as Section 162 as amended goes, it does not specifically provide for the giving of any copies at all, and it would, therefore, appear that the accused can under the amended Act ask for only those copies for which provision has been made under Section 173, and as I have already stated above Section 173 cannot have any application to a case like the present. The accused petitioner, therefore, cannot ask for these copies even under the Code as amended.

9. Reading Section 162 and Section 173 together, it seems to me that the correct legal position still is that the accused has or will have a right toask for copies of the statements of witnesses madeto the police in relation to the offence for which he is being actually tried. The change that has been brought about is that under the

procedure which existed prior to the amendment, such copies were only to be supplied on request being made by the accused, but under the amended procedure, these are required to be supplied before the commencement of the proceedings.

This change in procedure certainty tends to facilitate the accused in the preparation of his defence and would save delay, and the entire controversy which at one time centred round the question as to the exact stage at which the accused was supposed properly to apply, or should have applied, for copies has been set at rest.

10. Learned counsel for the accused has sought permission to raise a new ground to the effect that, irrespective of Section 162, Criminal P. C., he is entitled to make use of the statements of the witnesses as made in the police for the purposes of Section 145 of the Evidence Act; and, therefore, he is entitled to ask for a copy of these statements on payment of the necessary costs to enable him to meet the case for which he is being prosecuted. The short answer to this contention is that Section 145 of the Evidence Act does not give him any right to obtain copies of such statements as are sought to be used by him for the purposes of that section.

All that he can do under that section is to make use of those statements if he is already in possession of them, but the question whether he can as a matter of right ask for the copies of any such statements is altogether an indepen dent question for which authority must be sought elsewhere, and if none is available, Section 145 will not come to aid the petitioner.

11. A further question arises, on the contention that the statements whose copies the petitioner is seeking had been made to the police not, in relation to the offence under trial but in connection with the investigation of a different offence, whether the accused would be entitled to make use of such statements by summoning the police officer concerned with the necessary diaries containing those statements and then prove them and make use of them under Section 145 of the Evidence Act.

Now, so far as that aspect of the case is concerned, it seems to me that the law is well settled at this date that what Section 162 restricts is the use of the statements made by the witnesses to .the police in relation to an offence for which an accused is being, tried except, as provided under the section, and there1 is no bar that statements made during the course of the investigation of an offence cannot be used in a subsequent case which was not under investigation when the witnesses made their statements.

Thus the statement of a witness made during the investigation of a previous case may be proved in a subsequent trial in another. case to impeach his credit or veracity. See -- 'Subbayya v. Veerayya' AIR 1933 Mad 65 (1) (C) and--'Ayub Ali v. Emperor', AIR 1942 Cal 277 (D). But the point still remains that in such a subsequent case the accused does not seem to be entitled as of right to obtain copies of such statements. Again, Section 172 of the Code does provide that every police officer making an investigation under Chapter XIV shall enter his proceedings in a diary, and the accused shall not be entitled to call for them; but if a statement is used by an investigating officer to refresh his 'memory, or if the court uses it for the purpose of contradicting such police-officer, the accused would also be entitled to make use of it for purposes of Section 145 or Section 161 of the Evidence Act.

There is authority, however, for holding that Section 172 does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. See -- 'BaiJ Nath v. Md. Din', AIR 1936 Lah 359 (E). In that view of the matter, all I need say at this stage is that It will be for the accused, if so advised, to make an application to the trial court for the purpose of getting the investigating officer concerned summoned with the diaries containing the statements of the witnesses examined by the police at the investigation into the offence of theft, in accordance with law, and I have no doubt that if and when such an application is made, the trial court will consider it on the merits.

12.Be all. this as it may, I have no hesitation in holding that the order of the Courtsbelow refusing to grant copies of. the statementssought lay the petitioner, for the reasons explained above, is correct, and does not call for any interference.

13. So far as the second contention raised on behalf of the petitioner, namely, that the complaint made against him does not disclose the ingredients of Section 182 is concerned, all I wish to say is that this contention does not appear to me to have been raised before the trial Magistrate. Consequently, I do not think it proper to consider this contention in the exercise of my revisional jurisdiction. It would be for the accused to raise this question in a proper manner before the trial court and to obtain its decision on it in the first instance. In this view of the matter, I decline to go into this question, and repel this contention also.

14. The result is that this revision fails andis hereby dismissed.