

**In Re: Kaliyappa Udayan**

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**Court :** Chennai

**Decided On :** Feb-04-1937

**Reported in :** AIR1937Mad492; (1937)1MLJ613

**Appellant :** In Re: Kaliyappa Udayan

**Judgement :**

ORDER

**Pandrang Row, J.**

1. The petitioner and several others were accused of being in possession of billets of illicit sandalwood suspected to have been removed from a certain reserve forest and they were charged with an offence punishable under Section 21(f) of the Madras Forest Act.

2. Apparently in the course of the enquiry there was an attempt made to convert the charge into one of theft or dishonest detention of stolen property. In the course of the enquiry the first accused moved the Court for the production of certain statements recorded by the Forest Range Officer in the course of his investigation in the present case from accused 2 and 3 and others. Summons for the production of these records appears to have been issued and they appear to have been actually produced in Court. Privilege was claimed under Sections 123 and 124 of the Indian Evidence Act. The Magistrate thought that such privilege could not be claimed and even addressed the District Forest Officer on the subject expressing

that opinion. (Vide the Sub-Magistrate's letter dated 27th April, 1936, to the District Forest Officer.

3. The forest Officer appears to have contended that the statements recorded at the time of the investigation were not admissible as legal evidence. Finally the Magistrate's successor passed an order disallowing the request of the accused for the production of the statement in question.

4. The last order of the Magistrate which is now sought to be revised is not very clear as to the ground on which the request of the accused was refused. There is a reference to the privilege claimed under Section 123 of the Indian Evidence Act in the order and also to the objection made by the vakil for the second accused on the ground that the records were inadmissible in evidence. The learned Sub-Magistrate appears to have mixed up these two questions which ought to have been kept separate.

5. The first question was can privilege be claimed in respect of these statements under Sections 123 and 124 of the Indian Evidence Act? And the second was 'if no such privilege can be claimed and the statements have to be produced in Court would they be admissible in evidence?

6. So far as the first question is concerned it is clear that no privilege can be claimed under Sections 123 and 124 of the Evidence Act, in respect of these statements. They do not relate to any affairs of state nor can they be said to be communications made in official confidence the disclosure of which would be injurious to public interests. The statements were recorded in the course of an investigation permitted by law and there is absolutely no reason why the record of such an investigation should not be made available to the Court which hears the same case judicially.

7. I have therefore no doubt that the production of the statements in question ought to have been insisted upon by the Magistrate and the statements should have been permitted to be inspected by the first accused at whose instance they were called for.

8. As regards the other question whether any of the statements are admissible in evidence in the absence of the statements themselves it is not possible to pronounce any opinion. It will be for the Magistrate after perusing the statements and considering the objections as to their admissibility that may be raised before him to decide for himself whether any particular statement which is sought to be put in as evidence is admissible or not. The Sub-Magistrate is therefore directed to proceed with the enquiry in the light of the above observations.

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