

In Re: Thoomulur Anantapadmanabiah

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Court : Chennai

Decided On : Sep-22-1930

Reported in : 129Ind.Cas.70; (1930)59MLJ914

Appellant : In Re: Thoomulur Anantapadmanabiah

Judgement :

ORDER

Krishnan Pandalai, J.

1. The question raised in this case is whether a person against whom a Magistrate has drawn up an order under Section 112, Criminal Procedure Code, asking him to show cause why he should not be bound over to keep the peace under Section 107 is entitled to obtain a copy of the written information given by the Police on which the order is based. The ' Magistrate refused to grant the copy holding that it is not a charge-sheet, as the petitioner described it in his application. That it is not a report under Section 173, Criminal Procedure Code, copy of which should under Clause 4 of that section be furnished on application and payment to the accused, is clear enough, Because the section is in terms confined to reports made on investigation under Chapter XIV of the Code. But this does not dispose of the matter. Section 548(leaving out the immaterial words) provides that 'if any person affected by an order passed by a Criminal Court desires to have a copy of ... 'other part of the record' he shall, on applying for such copy, be furnished therewith. The petitioner was clearly affected by the order under Section 112 requiring him to

show cause. If the information by the Police on which the Magistrate founded his order can be brought within the words 'part of the record', he is entitled to a copy. No direct decision on the point has been brought to my notice. But there are observations of more or less indirect application. In *Ranga Reddi v. King-Emperor* I.L.R. (1919) M. 450 : 38 M.L.J. 97 where the point for decision was whether and to what extent the order under Section 112 should set out particulars of the information and whether evidence of repute was admissible on a charge under Section 110, Clause (f), Seshagiri Aiyar, J., after pointing out that it is of the utmost importance that the information communicated to the accused under Section 112 should be clear and specific, says at p. 451:

The accused is to be put on his trial on information received behind his back. In the case of a complaint the accused may be entitled to a copy if he applies for it, but in the case of an information of this kind, which ex necessiie is a confidential one, the accused is* entitled to be told the nature and extent of the information on which the Magistrate intends to take the action against him.

2. This passage is cited by Madhavan Nair, J., in *Kutti Goundan, In re* : AIR1925 Mad189 in another similar case where the question for decision was whether the order under Section 112 contained sufficient particulars to enable the accused to prepare for his defence, and to summon witnesses on his side before the actual enquiry commences. In both cases the learned Judges assumed that the accused is not entitled to a copy of the information to the Magistrate and it may also be pointed out that the insistence on particulars in the order under Section 112 would to a great extent be superfluous if the accused were entitled to obtain copies of the information on which that order is based. At the same time it cannot be denied that in neither case was Section 548 under consideration nor were the learned Judges considering whether the report of the Police on which the order under Section 112 is based is 'part of the record' in which that order is made.

3. On the other side there are observations of at least three learned Judges in a contrary sense in the well-known Full Bench decision in *Queen-Empress v. Arumugam* I.L.R. (1897) M. 189 : 7 M.L.J. 167 ' That case was decided in 1896 before the amendment of Section 173 enabled accused persons to get copies of

charge-sheets under Chapter XIV. The question related to copies of Police reports under Sections 157, 168 and 173 of the then Code. Of the four learned Judges who constituted the Court three held that reports under Sections 157 and 168 were not public documents and consequently the accused were not entitled to copies of them. The Court was equally divided as to reports under Section 173, two Judges holding that they were and the other two that they were not public documents of which the accused could get copies. The two referring Judges at page 192 say with reference to the argument founded on Section 548 that if an order has been made on a Police occurrence report or charge-sheet affecting the person accused such as an order for his arrest or for his remand to custody, he is ipso facto entitled to a copy of that document under the express terms of Section 548 of the Code of Criminal Procedure. At page 206 Benson, J., refers to the argument based on Section 548. He was of opinion that the argument would succeed if the Magistrate making the order is at the time a Criminal Court. He rejected the argument as he thought that a Magistrate is not a Court when enquiring into offences which he is not empowered to try. This distinction between Magistrate's and Courts is no longer valid after the decision of the Privy Council in *Clarke v. Brojendra Kishore Roy Chowdhury* and there can be no doubt that a Magistrate acting under Section 112 is a Court. It would, therefore, seem that but for this distinction which did not exist, Benson, J., would have upheld the view of the referring Judges as to Section 548. There is, however, no denying the fact that these were observations, not; decisions, and that they were made with respect to Police reports made under Chapter XIV and not to Police reports or information to a Magistrate with a view to his taking action under Chapter VIII.

4. In this state of authority, I have to decide the point before me on a consideration of the words of Section 548 and such considerations as may be based on the nature of proceedings under Section 107 of the Criminal Procedure Code. In brief, what is meant by 'the record' and when does 'the record' begin in proceedings under Section 107? On the best consideration I can give to the matter, I think the record intended is the magisterial record and such record in proceedings under Section 107 begins usually with the order under Section 112, except where a Magistrate not empowered under Section 107 wishes to have proceedings taken under it and issues a warrant under Clause 3 of that section. 'The information

which leads to action under Section 107 may be of the most varied kind. It may be oral, sworn or not sworn, and need not be in writing. It may be from any source, official or unofficial, formal or informal. It may be derived from the Magistrate's own knowledge. He is not bound to disclose the source or the nature of the information received. See *In the matter of the petition of Mithu Khan I.L.R. (1904) A. 172*. I am, therefore, of opinion that the information or report of the Police in this case was not part of the record within the meaning of Section 548, Criminal Procedure Code, and that the petitioner is not entitled to a copy of it. The petition must be dismissed.

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