

In Re: Dastagir Alias Gulam Dastagir and ors.

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SooperKanoon Citation : sooperkanoon.com/790426

Court : Chennai

Decided On : Jul-16-1937

Reported in : AIR1937Mad822; (1937)2MLJ402

Appellant : In Re: Dastagir Alias Gulam Dastagir and ors.

Judgement :

ORDER

King, J.

1. The petitioners in this case are charged with murder and the preliminary enquiry into the alleged offence is in progress before the learned third Presidency Magistrate. P.W. 1 has been examined in chief, and one question has been put to him in cross-examination. At that stage petitioner's pleader applied under Section 162 of the Code of Criminal Procedure for a copy of P.W. 1's statement to the Police. The learned Magistrate refused to grant it. Hence this application in revision. It is a little difficult to understand the precise reason for the refusal. The Magistrate begins by pointing out that the one answer given by the witness in cross-examination does not establish any contradiction but if he means by that the accused's pleader must either establish an actual instance of contradiction or lay a foundation for the belief that such a contradiction will be found if the police record is referred to, he is asking the accused's pleader to perform an impossible task. (Emperor v. Tahal Saithwar I.L.R. (1930) 53 All. 94 Public Prosecutor, Madras v. Vedi (1929) M.W.N. 885 and Babarali Sardar v. Emperor I.L.R. (1928) Cal. 840.)

From what the Magistrates goes on to say, however, it seems to me that he must also have refused to grant the copy because he did not himself on examining the statement perceive in it anything which contradicted the witnesses' evidence in Court, though he does not specifically say this. This raises the question whether under Section 162 of the Code of Criminal Procedure it is the duty of the Court to satisfy itself that a contradiction exists before granting a copy. There are two cases in which this question has been considered which have been brought to my attention. One is that reported in *Jhari Gope v. Emperor* I.L.R. (1928) Pat. 279. There it is clearly laid down that Section 162 of the Code of Criminal Procedure does not require the Court so to satisfy itself and that subject to the provisions of the second proviso regarding any part of the statement the Court must grant the copy and it is for the accused's counsel to examine it after it is granted and to discover whatever contradiction may exist. The other is a Full Bench ruling of the Rangoon High Court, *Emperor v. Nga Lun* I.L.R. (1935) Rang. 570 which in a brief paragraph confirms the view that whether the Court itself finds any contradiction or not in the statement it must nevertheless grant a copy of it. The Magistrate relied upon an unreported judgment of my learned brother Burn, J., in Criminal Revision Case No. 44 of 1936. It was not necessary in that case to decide this point and though Burn, J., may perhaps have given an indication of this view he has not definitely said that a Court can refuse to grant a copy if it sees no contradiction itself.

2. Following with respect the Patna and Rangoon decision referred to above I hold that the learned Magistrate was wrong in refusing to grant the copy, and subject to anything which he may find under the second proviso direct him to grant it and proceed with the enquiry.