

In Re: K. Krishnan and anr.

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SooperKanoon Citation : sooperkanoon.com/813741

Court : Chennai

Decided On : Sep-27-1940

Reported in : AIR1941Mad296

Appellant : In Re: K. Krishnan and anr.

Judgement :

Krishnaswami Ayyangar, J.

1. It appears that in this case while the preliminary enquiry was being held by the committing Magistrate, the accused was put the following question after the evidence for the prosecution had been recorded : 'Q. - You have heard the evidence of prosecution witnesses; what have you to say?' The accused gave the following answer : 'A. - I am filing my written statement.' That written statement appears to be a long document consisting of 24 pages of typed matter. The question now arises as to whether this long typed statement filed by accused 1 before the Magistrate comes within Section 287, Criminal P.C., and whether it is a document containing the examination of the accused duly recorded by or before the committing Magistrate. If the document contains the record of the examination by or before the committing Magistrate, it is the duty of the prosecutor to tender it and read it as evidence. But for reasons which will be mentioned, it does not appear to be such a document. The written statement was filed in place of the answers to be given by the accused, at the stage at which the Magistrate had to question him under Section 209, Criminal P.C. Section 209, Criminal P.C., defines

the purpose for which the Magistrate is authorized to interrogate the accused, and the stage at which he is to do so. Section 209 (1) says:

When the evidence referred to in Section 208, Sub-sections (1) and (3), has been taken and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate, that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

2. What the committing Magistrate is called upon to do by the terms of the section is to place before the accused the circumstances appearing in the evidence against him and afford him an opportunity, if he likes to take advantage of it, to explain those circumstances. Far from the section conferring any privilege on the accused to file a written statement, it merely casts a duty upon the Magistrate to question the accused and record his answers, if any, for the limited purpose specified in the section. There is another section relating to the matter under consideration in Chap. XXV containing the general provisions as to inquiries and trials, namely Section 342. Clause (1) of this section says:

For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

3. Clause (2) says:

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

4. Clause (3) says:

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into or trial for, any other offence which such answers may tend to show he has committed.

5. On the face of it, this section indicates the general procedure to be followed in the matter of judicial interrogation of an accused person and the extent to which the answers elicited are to be made use of, for deciding upon the guilt or innocence of the accused. The purpose for which the Court is entitled to put questions to the accused under this section is identical with the purpose indicated in Section 209, namely to afford the accused an opportunity to explain such circumstances as appear in the evidence against him. The questions which are to be put are questions to be put by the Court and the answers to be recorded are the answers to those questions. There is no warrant for the accused or his advisers taking advantage of the occasion to prepare a written statement beforehand and put it in, in lieu of the explanation which is to be elicited and only to be elicited by questions by the Court. I am aware of the practice that has been sometimes followed, of allowing the accused to file written statements in inquiries and trials. Written statements so prepared and filed are generally, as is well known, prepared with the assistance of the friends and legal advisers of the accused in order to present the case in as favourable a light as possible, with a view to exculpate the accused or minimize his guilt. The Code does not contemplate such a procedure. What it contemplates and what would be in fact really useful for the decision of the case is what the accused can himself say by way of explanation, and not what others can say for him. There is no warrant in the Code for the outcome of the labours of more capable and brainy persons being considered by the Court under Section 287. The practice has been time and again condemned but does not appear to have wholly disappeared. I now add my protest also in the hope that it will be laid to rest. The written statement of accused 1 in this case is an extreme type and I must exclude it from the records of the case. For the same reasons, the written statement of accused 2 though less objectionable in point of length must also be excluded.