

**In Re: Edward Philbert**

**In Re: Edward Philbert**

**SooperKanoon Citation :** [sooperkanoon.com/813858](http://sooperkanoon.com/813858)

**Court :** Chennai

**Decided On :** Oct-24-1934

**Reported in :** 159Ind.Cas.663

**Judge :** Pandrang Row, J.

**Appellant :** In Re: Edward Philbert

**Judgement :**

ORDER

**Pandrang Row, J.**

1. Two points raised in this petition, viz., that the Chief Presidency Magistrate was wrong in refusing to allow the accused to have the prosecution witnesses re-summoned and re-cross-examined after the framing of the charge, and (2) that a certain order passed by this Court directing the lower Court to grant copies of the statements made by the witnesses for the prosecution to the appellant under Section 162 of the Criminal Procedure Code has not been obeyed.

2. As regards the first point the facts of the case are that the Magistrate commenced the trial of the case after a charge had been framed by his predecessor-in-office whereupon the accused claimed to exercise the right conferred upon him by the 1st part of Section 350 of the Criminal Procedure Code which gives him the right of demanding a fresh examination and cross-examination of witnesses, This demand was satisfied by the Magistrate by re-

summoning the witnesses and re-hearing the evidence. What is now contended on behalf of the petitioner is that because the charge already framed by the former Magistrate was as it were confirmed by the new Magistrate and read over to the accused, the accused must have further opportunity of re-summoning witnesses for the prosecution for the purpose of cross-examining them. Such a right is not recognised by the 1st proviso to Section 350 of the Criminal Procedure Code and there is really no reason why such a right should be granted to the accused in the absence of any specific statutory provision. What the provisions of Section 350(1), Criminal Procedure Code, require to be done has been done by the Magistrate, and what the petitioner now wants is something which he is entitled to in law. The Magistrate cannot be said to have erred in the procedure adopted by him in dealing with the case.

3. As regards the 2nd point, it is stated by the Crown Prosecutor that what the petitioner wanted was a copy of the case diary and that if the petitioner really wanted copies of any other record containing statements of the witnesses recorded under Section 162, Criminal Procedure Code, the Magistrate would have been ready and willing to grant him copies. The petitioner's Counsel, states before me that he wanted the original statements recorded under Section 162, Criminal Procedure Code, and that he is not satisfied with the copy of the case diary. If as a matter of fact the Magistrate is able to get hold of any other statements recorded in this case under Section 162, Criminal Procedure Code, from the custody of the Police, he will allow the petitioner the opportunity of getting copies of the same for the purpose of enabling him to cross-examine the witnesses for the prosecution. This direction may not be quite necessary but in order to prevent any future misunderstanding I think it fit to embody this direction in this order. This petition is otherwise dismissed.