

**In Re: Dastagir and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/814388](http://sooperkanoon.com/814388)

**Court :** Chennai

**Decided On :** Jul-16-1937

**Reported in :** 171Ind.Cas.962

**Judge :** King, J.

**Appellant :** In Re: 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. Prosecution Witness No. 1 has been examined-in-chief, and one question has been put to him in cross-examination. At that stage petitioners' Pleader applied under Section 162, Criminal Procedure Code, for a copy of P.W. No. 1's statement to the Police. The learned Magistrate reduced to grant it. Hence this application in revision. It is 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 : Tahal Saithwar v. Emperor : AIR1931 All34 ; Public Prosecutor, Madras v. Vedi : AIR1930 Mad185 and Babar Ali Sardar v. Emperor : AIR1929 Cal182 .

2. From what the Magistrate 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 witness's evidence in Court, though he does not specifically say this. This raises the question whether under Section 162, Criminal Procedure Code, 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 considered which have been brought to my attention. One is that reported in Jhari Gope v. Emperor : AIR1929 Pat268 There it is clearly laid down that Section 162, Criminal ' Procedure Code, 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 to discover whatever contradictions may exist. The other is a Full Bench ruling of the Rangoon High Court Emperor v. Nga Lun Thaung A.I.R. 1935 Rang. 370 : 158 Ind. Cas. 784 : (1935) Cr. Cas. 1088 : 36 Cr.L.J. 1487 : 13 R. 570 : 8 R. Rang. 202 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 relies 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.

3. Following with respect the Patna and Rangoon decisions 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.