

In Re: Kuppa Mudaliar and ors.

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Court : Chennai

Decided On : Apr-17-1925

Reported in : AIR1925Mad1206; 90Ind.Cas.659

Appellant : In Re: Kuppa Mudaliar and ors.

Judgement :

ORDER

Devadoss, J.

1. This is an application to revise the order of the Sessions Judge of Salem. The point urged on behalf of petitioners is that the depositions of witnesses were not read over to them as soon as their examination was over. In other words, the terms of Section 360 of the Criminal Procedure Code were not complied with. Report was called for from the Magistrate who tried the case, and in his report he says:

In cases where the depositions are long and would take a considerable time of the Court, if they were then and there read over and interjected to the witnesses what is done is to keep all the witnesses aside as soon as each of them is examined so as not to give them an opportunity to mingle with those that are not examined and the place so allotted is within the views of the accused and their pleader. The depositions of the witnesses are read over and interpreted to them after the work in connexion with the case for the day is over.

2. This practice, though it may facilitate the work of the Court, is not one which is sanctioned by Section 360(1) of the Criminal Procedure Code. Clause (1) of Section 360 reads thus:

As the evidence of each witness taken under Section 356 or Section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall if necessary be corrected.

3. The direction here is mandatory and not directory. As each witness's evidence is completed, it should be read over to him in the presence of the accused or his pleader. It is not proper for the Magistrate to examine a number of witnesses and ask them to be in a room and then have the depositions read over to them. The learned Public Prosecutor contends that this is only an irregularity and not an illegality and it is not shown that the accused have been prejudiced by such a procedure being adopted. This is not merely an irregularity. I hold it an illegality; for the terms of the section being mandatory, any violation or departure from the practice or procedure enjoined upon the Court is not merely an irregularity but an illegality. By having recourse to this practice the witness whose evidence was taken, say at 11 o'clock or who closed his evidence at 12 o'clock and whose evidence is being read over to him at 5 o'clock after the day's work is over, might be able to improve upon his evidence and try to get his evidence corrected. It is not also fair to an honest witness not to have his deposition read over soon after he made it, for, if the Magistrate has incorrectly recorded the deposition, and if it is read over to the witness some hours after, the question would arise whether the witness is correct in his statement that he did not make such a statement but some other statement and whether the correction should be accepted or not. It is, I think, fair both to the witness as well as to the Magistrate who takes down the deposition as well as to the accused, to have the deposition read over as soon as the examination of the witness is over. It would avoid a conflict between any recollection of the accused's pleader, the recollection of the prosecuting counsel and the recollection of the Court as well as the recollection of the witness, seeing there are four different persons to be considered in this connexion. I think the provision in Section 360(1) is not only a salutary provision but is a provision

intended for the furtherance of justice. That being so, the procedure adopted by the Magistrate is an illegal procedure and I have no other course but that of setting aside the conviction and directing the Magistrate to retry the case.

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