

Abdul Majid Vs. the King

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Court : Kolkata

Decided On : Sep-12-1949

Reported in : AIR1950Cal165

Judge : Sen, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 162 and 174; ;
[Evidence Act, 1872](#) - Section 145

Appeal No. : Criminal Revn. No. 684 of 1949

Appellant : Abdul Majid

Respondent : The King

Advocate for Pet/Ap. : S.S. Mukherjee, Adv.

Judgement :

ORDER

Sen, J.

1. This Rule has been obtained by the accused whose application to be given copies of the witnesses' statement to the police during the investigation of this case has been refused by the learned trying Magistrate. Against the order of refusal the Sessions Judge was moved to refer the matter to this Court. The learned Sessions Judge stated that the order was bad but he said that the

Magistrate may reconsider the order and allow the defence to get copies of the statements made by the witnesses before the police or he may acquit the accused. For these reasons he thought that he should not delay the proceedings by making a reference to this Court.

2. The learned Magistrate's order is in my opinion entirely wrong. An accused person is entitled under the provisions of Section 162, Criminal P. C., to get copies of the statements made by persons to the police during an investigation under Ch. 14 of the said Code provided that such persons are examined as witnesses by the prosecution. The accused when he gets such statements is entitled to use them for the purposes of contradiction in the manner provided by Section 145, Evidence Act. Now, Section 162 of the Code states that persons examined by the police shall not sign their statements. These statements were signed by the witnesses and the Magistrate says that this is a good ground for holding that Section 162 of the Code does not apply and therefore the defence are not entitled to get copies of the statements of the witnesses. This view, I must say, with respect exhibits both a misappreciation of the law and also a wrong sense of justice and fair play. Section 162 of the Code nowhere says that if the statements made to the police by witnesses are signed by them, the accused will not be entitled to get copies of such statements. It merely contains a provision that the statements should not be signed. The police or the prosecution cannot render the section nugatory by disobeying its provisions and making the witnesses sign their statements. I should have thought that an elementary sense of justice would have prevented any one from coming to such a conclusion as the learned Magistrate has done. Next, the learned Magistrate holds that as the statements were recorded under the provisions of Rule 254 (b), Police Regulation, Bengal, I therefore those statements do not come within the purview of Section 162, Criminal P. C. The answer to this point is obvious. If these statements be treated as statements recorded under the Police Regulation, Bengal, then there is nothing to prevent the accused getting copies of such statements for cross examination of the witnesses under Section 145, Evidence Act. Such statements are not privileged. In this connection I would refer to a decision of this Court in the case of Panahanan Mukherjee v. Emperor : AIR1929 Cal257 . Further, the investigating officer himself says that he carried out the investigation in accordance with the provisions of Section 174,

Criminal P. C. If that be correct, then Section 162, Criminal P. C., applies because it refers to statements made by persons to a police officer in the course of investigation under ch. 14 and Section 174 is in chapter 14, Criminal P. C. I do not know why the learned Magistrate says that this was not an investigation under Section 174, Criminal P. C. That section deals inter alia with the investigation of a case where a person had died under circumstances raising a reasonable suspicion that some other person has committed an offence. Here, the case related to the death of a girl being caused by the rash driving of a motor vehicle. This clearly comes under the provisions of Section 174 (1) (c), Criminal P. C. I wish it to be clearly understood that I am not for a moment suggesting that the case against the accused is in any way established, nor am I giving any opinion whatsoever regarding the merits of the case. All I wish to say is that the case is one which falls under Section 174 (1) (c), Criminal P. C., if the allegations are proved to be true. It may also fall under the provisions of s. 174 (1) (b) of the Code.

3. For the reasons stated above, I set aside the order of the learned Magistrate and direct that copies of the statements made by persons to the police who are called as witnesses in this case be supplied to the accused whether they are signed or unsigned or whether they are recorded under the provisions of chapter 14, Criminal P. C., or under any other provision of the law in order to enable the accused to use the statements for the purpose of contradiction.

4. The Rule is made absolute.

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