

Balabux Darolia Vs. the King

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Court : Kolkata

Decided On : Nov-25-1949

Reported in : AIR1950Cal353,54CWN286

Judge : Sen, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161 and 162

Appeal No. : Criminal Revn. No. 930 of 1949

Appellant : Balabux Darolia

Respondent : The King

Advocate for Pet/Ap. : S.S. Mukherjee ; and Priti Bhusan Burman, Adv.

Judgement :

ORDER

Sen, J.

1. This rule has been obtained by the accused who has been convicted of having committed an offence punishable under Section 14, Bengal Motor Spirit Sales Taxation Act of 1941, and sentenced to pay a fine of Rs. 300 in default to undergo simple imprisonment for 2 months. This sentence was upheld on appeal and the accused has obtained this rule.

2. Several points were taken in the petition, applying for this rule. Only one point has been pressed, viz. that the accused has been prejudiced by reason of the refusal of the Magistrate to allow the accused to have copies of the statements made to the police by witnesses under Section 161, Criminal P. C. I have seen the learned Magistrate's reply to this ground. He says that the matter was not pursued on the date fixed. It seems however from the record that there were two applications; the first application apparently was a verbal one and it was rejected. Thereafter, there was a written application referring to the prior application and asking the Magistrate to grant copies. The learned Magistrate passed an order upon this latter application. It is difficult to say that the accused did not pursue the application. Next, the learned Magistrate says that as the case depended on documentary evidence there was no question of prejudice to the accused. I cannot accept this view. Further the learned Magistrate says that the statements were 'boiled statements' and therefore the accused was not entitled to them.

3. I cannot agree with this view of the learned Magistrate. I do not know precisely what he means by 'boiled statements'. I presume he means statements not recorded verbatim but recorded briefly, Whether the statements were boiled or unboiled an accused is entitled to get copies thereof. These statements are very valuable to an accused person for the purpose of cross-examination and until the statements are seen it is not possible to say whether or not the accused has been prejudiced by the failure of the Court to give copies of the statements.

4. I therefore set aside the order of conviction and sentence and direct that the accused be furnished with copies of statements made by the witnesses examined in Court before the police whether they were recorded in full or whether the records consisted only of the gist of the statements. The case started under Section 14, Bengal Motor Spirit Sales Taxation Act of 1941 shall be retired from the stage at which the accused should cross-examine the prosecution witnesses. The case shall be retried by some other Magistrate. The Rule is made absolute.