
(1948) 03 MAD CK 0008
In the Madras High Court

In Re: C.W. Casse

Date of Decision : 31-03-1948

Acts Referred:

Evidence Act, 1872 — Section 157

Citation : (1949) CriLJ 28

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Judgement

Govinda Menon, J.—M. P. no. 166 of 1948 in the Court of the Chief Presidency Magistrate, Madras, was an application by one Mr. C.

W. Casse, praying that his statement should be recorded u/s 164, Criminal P. C, in order that it may be used for the purpose of the enquiry or trial

which might arise out of Crime No. 2 of 1947 investigated by the Special Police Establishment, New Delhi. It does not appear from the

proceedings that there was any affidavit filed in support of the petition before the learned Chief Presidency Magistrate; but from the order of the

lower Court it appears that the Court was informed that one Mr. Thompson had been arrested at Bangalore under instructions from the Delhi

special police in regard to certain offences said to have been committed by him at Cawnpore. Mr. Casse requested the Magistrate to record his

statement u/s 164, Criminal P. C, for the reason that the statement would be very important evidence in connection with the proposed enquiry or

trial.

2. The learned Magistrate dismissed that application holding that there was nothing in the application before him indicating as to whether the matter

was under investigation or whether an enquiry or trial had not commenced. The petitioner offered to go into the witness box to give evidence with

respect to the pending investigation, but that request was refused on the ground that the petitioner was not competent to speak to the factum or to

the stage of the investigation and whether the enquiry or trial had not commenced before a Magistrate having "jurisdiction to try the said offence.

Moreover the lower Court was of opinion that Section 164, Criminal P. C, was not intended to enable the accused to secure in advance evidence

which he might lead in defence in case he should be tried later on. Another reason for dismissing the application was that to permit such a

procedure would be an abuse of the intendment of the section. Mr. Govind Swaminathan raised the same contention before me as in the lower

Court and urged that the reasons given by the learned Chief Presidency Magistrate are unacceptable. According to the learned Counsel, on the

plain words of the section all that the Magistrate need satisfy himself is about the existence of an investigation under Chap. XIV, Criminal P. C, and

also that such investigation had not become fructified in an enquiry or trial. I am inclined to hold that it is not obligatory upon the Magistrate to

record the statement of an individual simply because an application is made to him that such a statement may be necessary in an enquiry or trial that

may develop as a result of the investigation. It is not all investigations that culminate in an enquiry or trial. A large percentage of investigations end in

the abandonment or non-initiation of criminal proceedings. Therefore any person who feels that he has useful information to give in connection with

the investigation will first of all have to contact the investigating police officers and impart that information to such investigating staff.

3. In the present case there was no material before the Magistrate from which it could be inferred what the nature of the offences complained was

against the alleged suspect Mr. Thompson. Even if Mr. Casse is in a position to speak about the existence or pendency of an investigation, in the

very nature of things he will not be competent to speak to the nature and details of the complaint which is being investigated by the police unless

Mr. Casse himself was the complainant. That the statement proposed to be given by him was intended to be used on behalf of the defence is

sufficient by itself, to indicate that Mr. Casse cannot be the complainant. Therefore it is impossible to predicate with any degree of certainty the

correctness of the information likely to be given by Mr. Casse.

4. Mr. Swaminathan invited my attention to a decision in Mahomed Casim v. Thumby Sahib AIR 1940 Hang. 53 ; (1940) Cri. L. J. 392, where

there is a note by Mosely J. appended to the judgment indicating that in that particular case the accused and his pleader took certain witnesses to a

Magistrate empowered to record statements u/s 164, Criminal P. C, and that after the statements were taken, the record of the proceedings was

given to the witnesses them, selves or more probably to the pleader. The learned Judge was of opinion that such a procedure was wholly illegal

and that under Sub-section (2) of Section 164 such statement shall be forwarded by the recording Magistrate to the Magistrate by whom the case

is to be enquired into or tried. From this note appended to the judgment of the learned Judge, it is argued that it was competent for an accused or

his pleader to take a witness before a Magistrate empowered to record a statement u/s 164, Criminal P. C, and get the statement of the witness

recorded by the Magistrate even though the investigating police have not taken the initiative in requesting the Magistrate to record the statement or

confession. It seems to me that on a true and correct interpretation of the section, the argument of Mr. Swaminathan is right. It is not necessary that

the Magistrate should be moved by the police in order that he might record a statement. There may be instances where the police may not desire

to have recorded, the statement of a witness for some reason or other. In such a case, there is nothing preventing the witness to go to the

Magistrate and request him to record the statement and if a Magistrate records his statement and transmits the same to the Court where the

enquiry or the trial is to go on, there is nothing wrong in his action. But such a thing will be very exceptional, as there is always a discretion in the

Magistrate to refuse to record the statement. Ordinarily, when a police officer requests the Magistrate to record the statement of a witness on oath

u/s 164 , Criminal P. C., such a request will not be refused by the Magistrate. But when a private party seeks to invoke the powers of a Magistrate

under S. 164, Criminal P. C, the Magistrate has got a very wide discretion in acting or refusing to act. In this case I do not think that the learned

Magistrate has unwisely refused to exercise the discretion.

5. I do not think that the object to be achieved, viz., that of using the statement to corroborate the evidence of the deponent to be given in future at

the enquiry, can legally be permitted. In order that a previous statement of a witness can be used to corroborate the evidence given at an enquiry

or trial, the necessary requisites of Section 157, Evidence Act, have to be complied with. The former statement relating to the same fact must have

been given at or about the time when the fact took place or before any authority legally competent to investigate the fact. It is not suggested that the

Chief Presidency Magistrate is legally competent to investigate some offences alleged to have occurred in Cawnpore. Nor is it stated that the

statement proposed to be given u/s 164, Criminal P. C, would satisfy the condition that it was given at or about the time when the fact took place.

In these circumstances I am not prepared to hold that the lower Court has acted illegally or with material irregularity in the exercise of its discretion.

The criminal revision case is dismissed.