
(1954) 02 MAD CK 0036
In the Madras High Court

Padmaraju Konetiraju

APPELLANT

Vs

Padmaraju Subbaraju and Others

RESPONDENT

Date of Decision : 02-02-1954

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1954) CriLJ 1565

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—In February 1953 one Padmaraju Konetiraju filed a petition u/s 145, Criminal P. C., before the Additional First Class Magistrate, Chandragiri, and the learned Magistrate sent it to the police for report. During the course of their enquiries the police examined among others a man called Subbaraju. On the report of the police the Magistrate called upon the parties concerned to put in written statements of their respective claims as regards the fact of actual possession of the land in dispute. Thereafter he commenced his enquiry in the usual manner, and Subbaraj was examined on behalf of "B" party. Counsel for "A" party wanted to cross-examine Subbaraju, with reference to certain statements he had made to the police during the course of their enquiry. Counsel for "B" party objected on the ground that the statement fell within the ban of Section 162, Criminal P. C., and that objection was upheld by the learned Magistrate. The present petition has been filed to set aside that order.

2. It seems to me that the order of the learned Magistrate is clearly erroneous. Section 162. Criminal P. C., refers not to every statement recorded by the police, but only to statements made to them in the course of their investigation under Chapter XIV and Chapter XIV relates to enquiries by police into cognisable offences and non-cognizable offences. An enquiry made by the police on a petition referred to them by a Magistrate u/s 145, Criminal P. C., is not an investigation under Chapter XIV.

In the second place Section 162, Criminal P. C. prohibits the use of statements to

the police only "at any enquiry or trial in respect of any offence under investigation at the time when such statement was made". When the police made an enquiry into the petition presented to the Magistrate u/s 145, Criminal P. C., there was no "offence" under investigation. A proceeding before a Magistrate u/s 145, Criminal P. C., is not an enquiry or trial in respect of any "offence". What the Magistrate is called upon to determine u/s 145, Criminal P. C., is not whether any offence has been committed, but who was in possession of the property on the date of the order made u/s 145(1), Criminal P. C. On the language of the section it is clear that the order sought to be revised is erroneous.

3. In - Arunachala Asari Vs. Anandayammal, , Burn J. took the same view :

An enquiry by a Magistrate under Chapter VIII of the Criminal P. C. is not an enquiry into an "offence" and Section 162 of the Code cannot be used to shut out statements given to the police by persons, who are afterwards called as witnesses in the case.

On the other side reference was made to a case reported in- Kulbans Narain v. Ramsidh Singh AIR 1920 Pat 483 (B), where dealing with a police report in respect of a matter arising out of Section 145, Criminal P. C., the learned Judge observed,

It may be pointed out that the learned Magistrate is also wrong in referring in his judgment to the police report and the evidence contained therein upon the factum of possession. It is not admissible for any purpose except for initiating proceedings.

With the former sentence in this passage one may without hesitation agree. Reliance however was placed on the second sentence. But it seems to me that this observation is not very accurate, since u/s 145, Evidence Act, a witness may be cross-examined as to previous statement made by him in writing or reduced into writing and relevant to matters in question.

4. In these circumstances this revision is allowed and the order of the learned Magistrate is set aside.