
(1960) 02 BOM CK 0005
In the Bombay High Court
Case No : Criminal Ref. No. 64 of 1959

State of Bombay	Vs	APPELLANT
Seikh Kadar Seikh Amir and Others		RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

Cattle Trespass Act, 1871 — Section 22
Criminal Procedure Code, 1898 (CrPC) — Section 155, 161, 173

Citation : AIR 1960 Bom 476 : (1960) 62 BOMLR 497 : (1960) CriLJ 1421

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : N.L. Abhyankar, Special Govt. Pleader, for the Appellant; C.P. Kalele, for the Respondent

Judgement

(1) This is a reference by the learned Additional Sessions Judge, Khamgaon, recommending that the order passed by the Magistrate Second Class, Khamgaon, ordering that the statements of witnesses recorded by the police in the investigation of a non-cognizable offence u/s 22 of the Cattle Trespass Act should not be made available to the accused who are being prosecuted on charges u/s 379, Indian Penal Code, and Section 22, Cattle Trespass Act, should be set aside. The learned Magistrate held that the statements could not be made available to the accused because the offence u/s 22, Cattle Trespass Act, was a non-cognizable offence and could not be investigated by the police without the permission of the Magistrate. The learned Additional Sessions Judge has, however, held that this ground stated by the learned Magistrate is not correct because u/s 145 of the Evidence Act a witness can be contradicted by his previous statement made by him to the police in the course of the investigation even if a Police Officer was not competent and had no jurisdiction to record that statement. The learned Additional Sessions Judge relied on Ramkishun Sao and Others Vs. Emperor, where it was observed that

"previous statements reduced to writing are used in cross-examination u/s 145,

Evidence Act, but the section does not lay down that the writing which is to be used for the purposes of cross-examination must be by a person having jurisdiction to reduce the statement to writing."

The learned Additional Sessions Judge has, therefore, made this reference recommending that the order passed by the learned Magistrate should be set aside.

(2) The reference is opposed both by the learned Special Government Plader for the State, and also by the learned counsel for opponent No. 4. There is no duty cast on the police to give copies of the statements taken by them in the course of the investigation except as provided in sections 162 and 173, Criminal Procedure Code. Section 162, Criminal Procedure Code, applies only to the use of a statment made to the police in the course of the investigation under Chapter XIV, Criminal Procedure Code, at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The view taken by the learned Additional Sessions Judge that u/s 145 of the Evidence Act a wiitness can be contradicted by his previous staatement made by him orally and reduced to writing by a Police Officer not having jurisdiction to record it is no doubt correct, because a witness can always be contradicted by his previous statement to whomsoever made and in whatever manner made. The question however is whether the police can be compelled to give a copy of the statement to the accused during the course of the enquiry or trial against the accused. The statements in question were taken during investigation of a non-cognizable offence u/s Criminal Procedure Code of the Cattle Trespass Act. It is, therefore, contended that Section 162 has no application because the investigation was not of a cognizable offece u/s 157, Criminal ProcedureCode. But u/s 155, Criminal Procedure Co9de, which is in Chapter XIV f the Criminal Procedure Code, a Police Officer can investigate a non-cognizable offence under the orders of a magistrate. In this case, as the statements of witnesses were recorded in the course of investigation o a non-cognizable offence uder the Cattle Trespass Act, it will ordinarily be presumed that the official acts were regularly done and not irregularly done. The presumption is therefore that he investigation of the non-cognizable offence was done u/s 155, Criminal P., C., with the permission to the Magistrate. In my opinion, even if the investigation was without the orders of a Magistrate, as it purprted to be an investigation by the police under Chapter XIV, the provisions of Section 173 Criminal P. C. would apply and the accused will be entitled to the statements recorded u/s 161, Criminal P. C. of all witnesses whom the prosecution wishes to examine as its witnesses. It is also the duty of the Apolice Officer to helpin the administration of justice, and if the evidence of witness is liable to be contradicted by the statement made by him previosly to the police officer, it is the duty of such police officer to provide such a statement for the proper administration of justice.

(3) I, therefore, accept the reference of the learned Additional Sessions Judge, set aside the order passed by the learned Magistrate and order that copies of the

statements of the prosecution witnesses taken by the police in the course of the investigation of th offence u/s Criminal Procedure Code, Cattle Trespass Act, be supplied to the accused.

(4) Reference allowed.