
(1961) 03 MP CK 0011
In the Madhya Pradesh High Court

State of M.P.

APPELLANT

Vs

Ramadhin Bansdhari Kurai and Others

RESPONDENT

Date of Decision : 20-03-1961

Acts Referred:

Forest Act, 1927 — Section 26
Penal Code, 1860 (IPC) — Section 182, 379

Citation : (1962) CriLJ 550 : (1961) ILR (MP) 1050 : (1961) JLJ 1151

Hon'ble Judges : C.B. Kekre, J

Bench : Single Bench

Judgement

C.B. Kekre, J.—The Additional Sessions Judge, Jabalpur, has made this report u/s 438, Criminal Procedure Code, for setting aside the order of Magistrate First Class, Mandla, rejecting the prayer of certain accused persons, who have been prosecuted for offence u/s 26 of the Forest Act, for grant of copies of statements of the prosecution witnesses, recorded during investigation.

2. The offences for which the accused persons, Ramadhin, Motilal and sole, are being prosecuted, are offences u/s 26(l)(f) and (g) of the Forest Act. In respect of these very acts of the accused persons, for which they are being prosecuted, a report had been made to the police, who had held investigation, but did not put up a charge sheet. The Range Officer, Mandla, however, filed a complaint alleging commission of offences mentioned above, and it is this complaint which is being enquired into by the Magistrate First Class, Mandla.

3. The accused persons applied for being granted copies of statements of witnesses, recorded by the police during investigation, and later by the Forest Authorities. The learned magistrate held that since the cognizance was not taken on police report, but on complaint filed by the Range Officer, copies of statement of witnesses, recorded during investigation, could not be supplied.

4. The order of the learned magistrate is clearly wrong. The decision in AIR 1927 24 (Nagpur) to the effect that the view that provisions of Section 162, Criminal Procedure Code, do not apply to a case of complaint was not justified, was

brought to the notice of the magistrate, but he has not followed what was laid down in that decision, because in his view, the Criminal Procedure Code had been amended after that decision, and, hence, it would have no application. That conclusion of the magistrate is also wrong, since all that the amendment of the Criminal Procedure Code effected was that in cases started on police report, it was made obligatory for the prosecution to supply copies of statements of witnesses examined during investigation, and whom the prosecution proposes to examine at the trial, to the accused at the commencement of the trial. Formerly, the accused had to apply for copies of such statements. There has been no change in the law as regards the right of the accused person to copies of statements of witnesses, recorded during investigation.

5. The view taken in AIR 1927 24 (Nagpur) referred to above, was approved in *Bakhtawarsingh and Others Vs. The State*, . Copies of statements of witnesses to the accused cannot be refused on the ground that the case was being enquired into by the Court on complaint and not on report made by police. The offence, which is being enquired into by the magistrate, is the same, which was being investigated by the police, and during which statements of witnesses had been recorded by the police.

6. The learned magistrate has referred, in his order, the decision in *Jhumarlal Vs. The State*, . That decision can be distinguished on facts. Therein, a report of theft had been made by a person to the police, which was enquired into and found to be false. The person who made that report, was being prosecuted for offence u/s 182, Indian Penal Code. .The accused person then applied for copies of statements of witnesses, recorded by the police during investigation into the alleged offence of theft, and it was held that the offence that had been investigated into was quite different from the offence for which the accused was being prosecuted, and, hence, u/s 162, Criminal Procedure Code, he was not entitled to be furnished with copies of statements of witnesses recorded during investigation into the offence of theft. In the present case, the offence that was investigated by the police during which the statements of witnesses were recorded, is the same for which the accused persons are being tried before the magistrate.

7. It is very important that the accused should have facilities of cross-examining witnesses for the prosecution in as complete a manner as possible, and assistance of earlier statements of witnesses at the time of cross-examination is necessary for cross-examination in a complete manner.

8. I, therefore, accept the reference, and set aside the order of the magistrate by which he rejected the prayer of the accused persons for copies of statements of witnesses for the prosecution, recorded during investigation by the police, and later by the Forest Authorities. The magistrate will now furnish the accused persons with copies of statements of witnesses, whom the prosecution wants to examine, recorded by the police during investigation into the offence u/s 379, Indian Penal Code, and also the statements recorded by the Forest Authorities.