
(1969) 02 BOM CK 0030

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 525 of 1968

Tanajirao Martinrao Kadambande

APPELLANT

Vs

H.J. Chinoy

RESPONDENT

Date of Decision : 04-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Coroners Act, 1871 — Section 13, 16, 17, 18, 19
Evidence Act, 1872 — Section 1, 137, 154, 3
Penal Code, 1860 (IPC) — Section 193, 198, 41, 42

Citation : (1969) 71 BOMLR 732

Hon'ble Judges : Tulzapurkar, J

Bench : Single Bench

Judgement

Tulzapurkar, J.—By this writ petition filed under Article 226 of the Constitution the petitioner (Tanajirao Martinrao Kadambande) is challenging the validity and/or legality of the order dated September 9, 1968, passed by respondent No. 1 (the Coroner of Bombay) whereby respondent No. 1 has permitted respondent No. 3 (Smt. Padma II. Koregaonkar) to cross-examine witnesses that may be produced either on behalf of the police or on behalf of the petitioner during the Inquest that is being held by him in the matter of death of one Mrs. Roma Kadambande.

2. The facts giving rise to this petition may be briefly stated: The petitioner who happens to be the Deputy Inspector General of Police, Maharashtra State, has been residing in a flat at Ferohin, Worli, Bombay-18. In the early hours at about 5.45 A.M. on March 6, 1968, the petitioner's wife Roma Kadambande was found lying dead in the above flat under circumstances creating a suspicion that she may not have come by natural death. The petitioner sent for Dr. Telang, Administrative Medical Officer attached to the Police Maternity Home as well as Dr. Majumdar, Police Surgeon of Bombay; the former arrived at about 6.00 A.M. and the latter sometime thereafter. The postmortem examination of the dead body of the deceased Roma was conducted by the Police Surgeon but he deferred

his pronouncement upon the cause of death until he received the result of the chemical analysis of the blood and viscera of the deceased. The chemical analysis revealed that the blood contained Ethyl Alcohol and derivatives of barbituric acid and that the viscera contained a massive dose of barbituric acid. The police surgeon thereafter opined that the death was the result of acute barbiturate poisoning. A panchanama of the petitioner's flat was made and a large number of witnesses were interrogated by the police and their statements recorded. It appears that respondent No. 3, the mother of the deceased, told the police during the course of her statement that she suspected foul play in the matter of her daughter's death and that she desired the police to make a thorough investigation in the matter. She also made a similar allegation in writing to the Coroner of Bombay (respondent No. 1).

3. It may be stated that respondent No. 1 is currently holding an Inquest into the death of the deceased Roma Kadambande in accordance with the provisions of the Coroners Act, 1871 (Act No. IV of 1871) and at the said Inquest the police or the State of Maharashtra (respondent No. 2) are represented by counsel, respondent No. 3 (Smt. Koregaonkar) has engaged counsel and the petitioner is also represented by counsel. At the hearing of the Inquest, which was fixed on August 28, 1968, it became clear to the petitioner's counsel that counsel for respondent No. 3 was claiming a right to cross-examine all the witnesses who were going to be examined by the police and that he intended to exercise, such right and, therefore, the petitioner's counsel raised a preliminary objection denying that respondent No. 3 had any such right. It was submitted on behalf of the petitioner that on the facts of the case the only substantial issue before respondent No. 1 was whether the death of Roma Kadambande was suicidal or homicidal, that respondent No. 3 had alleged in writing that it was a case of homicidal death and had insinuated that Roma's husband (the petitioner) had hand in it and, therefore, in the circumstances, the petitioner who was in the position of a "suspect" was the only adverse party. It was further submitted on his behalf that the Inquest proceedings before respondent No. 1 were governed by the Indian Evidence Act and that u/s 137 of the said Act an adverse party alone had the right to cross-examine and therefore respondent No. 3 had no right and should not "be allowed to cross-examine the witnesses who would be produced by the police. It was conceded on behalf of the petitioner that respondent No. 3 could further examine-in-chief such witnesses after counsel for the State of Maharashtra had examined them in-chief first, but that no such witness could be allowed to be cross-examined by respondent No. 3 except as provided by Section 154 (i.e. if and when he turned hostile). After hearing the arguments of counsel for the parties, respondent No. 1 by his order dated September 9, 1968, held that respondent No. 3 who was making an allegation of foul play had the right to cross-examine any witness produced either by the police or by the "suspect" (the petitioner) and directed that the Inquest should proceed on the basis that respondent No. 3 would be permitted to do such cross-examination. It is this order passed by respondent No. 1 that is being challenged

by the petitioner.

4. On behalf of the petitioner Mr. Cooper raised a two-fold contention before me. In the first place he contended that the Inquest proceedings held by the Coroner of Bombay under the Coroners Act, 1871, were proceedings to which the Indian Evidence Act applied, inasmuch as, the Coroner was a "Court" and the proceedings before him were "judicial proceedings" as required u/s 1 of the said Act and since u/s 137 of the Evidence Act the right of cross-examination had been confined to only "adverse party" respondent No. 3 had no right to cross-examine any of the witnesses that may be produced by the police or the State of Maharashtra at the Inquest, because respondent No. 3 could not be regarded as any party-much less an "adverse party"-in such proceedings. According to Mr. Cooper, it is respondent No. 3 who had first suggested that the death of her daughter Roma was homicidal and had further insinuated that the petitioner had a hand in it and as such the petitioner who is in the position of a "suspect" at the said Inquest could be the only "adverse party" and when evidence would be tendered by the police through any witness such witness could be examined-in-chief by counsel for the State and may at the most be allowed to be further examined-in-chief by counsel for respondent No. 3, but unless a case was made out u/s 154 of the Evidence Act, respondent No. 3 not being an "adverse party" could not be allowed to cross-examine such witness. Secondly, he contended that even if the Evidence Act were not to apply to the proceedings before the Coroner of Bombay it would be in consonance with the principles of natural justice to allow only such persons who had some sort of legal interest in the matter to participate in the proceedings by leading evidence or by cross-examining the witnesses and, according to him, simply because a person was a relative or a close friend of the deceased who may have had deep attachment to the deceased or may have sentimental interest in the death of the deceased could not be allowed to participate in the proceedings or cross-examine the witnesses and in the present case respondent No. 3 who undoubtedly is a close relative of the deceased and as such would be sentimentally interested in the death of her daughter should not be allowed to participate in the proceedings as a party or cross-examine the witnesses, inasmuch as, she could not be said to have any legal interest in the matter. He, therefore, urged that the impugned order passed by respondent No. 1 permitting respondent No. 3 to cross-examine the witnesses that may be tendered by the police or the State of Maharashtra was liable to be set aside. On the other hand, learned Counsel for respondents Nos. 2 and 3 contended that the Coroner of Bombay could not be regarded as a "Court" for the purpose of Section 1 of the Evidence Act and in any event the Inquest proceedings before him were not "judicial proceedings" and as such the Evidence Act was inapplicable to such proceedings. In the alternative, it was contended that even if the provisions of the Evidence Act were generally held applicable to such proceedings, Section 137 and the restriction on the right to cross-examine witnesses contained therein was not applicable, inasmuch as the Inquest undertaken by the Coroner of Bombay being in essence a fact finding inquiry into

the cause of death-and even when it was of an accusatory character it being purely a preliminary investigation-there were no contending parties before the Coroner and as such no question of confining the right of cross-examination to any adverse party could arise. In other words, according to learned Counsel for the respondents, the State or the police were not a party to such proceedings nor was even the "suspect" any party to such proceedings and therefore no one being a party-much less an "adverse party" to such proceedings-the question of applying the provisions of Section 137 of the Evidence Act did not arise. Mr. Khambata for respondent No. 3 pointed out that an Inquest into the cause of an unnatural death was nothing but a public inquiry held by the Coroner with the help of a jury and one of the objects of holding such public inquiry was to satisfy the public conscience that such unnatural death was not hushed up and having regard to the provisions of the Coroners Act, especially Sections 8, 9, 16 and 17 he contended that any person, irrespective of whether he was a friend or relative of the deceased or a stranger to the deceased, who was acquainted with and could throw light on the circumstances attending such death and about whose bona fides the Coroner was satisfied, could be regarded as a person properly and sufficiently interested in the death of the deceased and the Coroner had the discretion to allow such person to participate in the proceedings or to cross-examine the witnesses and it was unnecessary that such person should be shown to have legal interest in the death of the deceased and Mr. Khambata further urged that respondent No. 1 had having regard to all the facts and circumstances of the case properly exercised his discretion and permitted respondent No. 3 to cross-examine the witnesses that were to be examined by the State of Maharashtra or police and his order could not be and should not be interfered with. Mr. Khambata further urged that if necessary, in the instant case, respondent No. 3 could be said to have sufficient legal interest in the cause of death of the deceased inasmuch as she was one of the heirs mentioned in the Fatal Accidents Act who could institute proceedings for recovery of damages arising out of any wrongful act on the part of the petitioner if one was established and as such respondent No. 3 had been rightly permitted to take part in the proceedings and cross-examine the witnesses. It was thus contended that the impugned order was proper and should not be set aside.

5. It is obvious that in view of Section 1 of the Evidence Act the provisions of that Act would apply to the proceeding only if two conditions are satisfied, namely, that the Coroner holding the Inquest must be a "Court" and secondly the proceedings before him must be "judicial proceedings". Mr. Khambata for respondent No. 3 relying upon a decision of this Court in the case of *State of Bombay v. Shirisk Pai* (1957) 60 Bom. L.R. 822, urged that the Coroner appointed under the Coroners Act, 1871, could not be regarded as a "Court." But in my view it is difficult to accept the said submission of Mr. Khambata. In *State of Bombay v. Shirisk Pan*, this Court was concerned with the question as to whether the Coroner appointed under the Coroners Act, 1871, was a "Court" or not for the purpose of the Contempt of Courts Act, 1952, and since the

expression "Court" had nowhere been defined in the Contempt of Courts Act, this Court accepted the ordinary or normal connotation of that expression and took the view that the Coroner was not a "Court" for the purpose of the Contempt of Courts Act. In the present case, the expression "Court" has been defined in Section 3 of the Evidence Act which says:

Court includes all Judges and Magistrates and all persons except Arbitrators legally authorised to take evidence.

and I have to consider as to whether the Coroner answers this definition of "Court" or not. Sections 16, 17, 19 and 20 of the Coroners Act clearly show that the Coroner has been legally authorised to take evidence during the course of an Inquest to be held by him and since he has been legally authorised to take evidence, he would be a "Court" within the meaning of the definition of that expression as given in Section 3 for the purpose of the Evidence Act.

6. On the question as to whether the "Inquest proceedings" before the Coroner are "judicial proceedings" or not, it is not possible to accept Mr. Cooper's contention that they are "judicial proceedings" for more than one reason. Unlike the expression "Court" which has been, denned in the Evidence Act, the expression "judicial proceeding" has nowhere been-defined in that Act and, therefore, the ordinary or normally accepted connotation of that expression will have to be taken into account. Sir James Stephen the framer of the Indian Evidence Act in his introduction to Indian Evidence Act has explained the concept of "judicial proceeding" as follows:

Every judicial proceeding whatever has for its purpose the ascertaining of some right or liability. II the proceeding is criminal, the object is to ascertain the liability to punishment of the person accused; if the proceeding is civil, the object is to ascertain some right of property or of status, or the right of one party, and the liability of the other, to some form of relief

Mayne in his Criminal Law of India has defined it as:

"Any step in the lawful administration of justice, in which evidence may be legally recorded for the decision of the matter in issue in the case, or on any question necessary for decision or final disposal of such matter.

In *The Queen v. Venkatachalam Pillai* (1864) 2 Mad. H.C.R. 43 Scotland C. J. accepted the above definition of "judicial proceeding" given by Mayne. In *Queen-Empress v. Tulja* ILR (1887) Bom. 36 though this Court was principally concerned with the question as to whether a Sub-Registrar of Assurances was a "Court" within the meaning of Section 195 of the Criminal Procedure Code, the Court has explained what is meant by "judicial inquiry" and at page 42 the relevant observations run as follows:

...An inquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; or between him and the community generally; but, even a judge, acting without such an object in View,

is not acting judicially.

In *L.B. Workers' Union v. 2nd Industrial Tribunal* AIR [1962] Cal. 875, the Calcutta High Court while holding that the proceedings before the Industrial Tribunal under the Industrial Disputes Act, (1947) were not governed by the provisions of the Evidence Act observed as follows in para. (15) of its judgment :

...A proceeding before an Industrial Tribunal, although deemed to be a judicial proceeding for certain purposes is not strictly a judicial proceeding in the sense that it calls for a decision on a question of legal right in dispute between the parties involving either a finding of fact or application of a fixed rule or principle of law or involving both. Since the proceeding before an Industrial Tribunal is not wholly a judicial proceeding but merely a quasijudicial proceeding, Section 1 of the Indian Evidence Act does not make the Act applicable of its own force to such a proceeding.

(The italics above are mine.)

7. In view of the aforesaid citations it seems to me clear that in its ordinary or normally accepted connotation the expression "judicial proceeding" means a proceeding in which judicial functions are exercised and a final decision is given affecting either the right or liability of one or the other party thereto, for, according to Sir James Stephen, unless the purpose of the proceeding is ascertaining of some right or liability the proceeding would not be a "judicial proceeding." Looked at from this point of view, it would be very difficult to come to a conclusion that the "Inquest proceeding" held by the Coroner under the Coroners Act at which no right or liability of any one is finally or effectively adjudicated upon is a "judicial proceeding" for the purpose of the Evidence Act. It is true that while drawing up an inquisition in accordance with the verdict of the jury, the Coroner is required u/s 24 of the Coroners Act to record findings not only on points as to where, when and by what means the deceased came by his death but also, if the death was occasioned by criminal act of another who is guilty thereof. But in spite of such findings being recorded no finality or binding effect has been accorded to it nor is any criminal liability to further prosecution directly incurred by the suspect as a result of such adverse findings being recorded against him. Upon such adverse findings being recorded all that the Coroner is directed to do u/s 26 of the Act is issue warrant for apprehension of the suspect and send him forthwith to a Magistrate empowered to commit him for trial. The position in law which obtains upon a verdict of the Coroner going against the suspect has been correctly stated by this Court in the case of *State of Bombay v. Shirish Pai* as follows (p. 825) :

He (Coroner) has power to draw up an inquisition which is to set out the details mentioned in Section 24. His power extends only to the recording of the verdict of the jury or the opinion of the majority of the jurors and forwarding the said verdict or opinion to the Commissioner of Police. The inquisition drawn up by him does not bind "the Commissioner of Police. There is no provision in the Coroners

Act which invests the inquisition with a binding character. The Commissioner of Police might or might not use the inquisition to assist him in such action as he might think of taking. The inquisition drawn up by the Coroner might say that the death of a person was not occasioned by the criminal act of another, and yet, though it might rarely happen, the Police might prosecute a person whom they might reasonably and upon the material before them suspect to have been concerned in the causing of the death of the deceased. On the other hand, the inquisition might say that the death of the deceased was caused by the criminal act of another, and yet the Police, upon the material available to them, might decide to take no action upon the inquisition.

If that be the correct position with regard to any adverse finding that may be recorded against the suspect at the end of the Inquest, it is clear that the purpose of the Inquest proceeding so held by the Coroner is not ascertainment of some right or liability and in the absence of such purpose the proceeding would not be a "judicial proceeding".

8. Mr. Cooper for the petitioner relied upon certain sections of the Coroners Act in support of his contention. He pointed that Section 9 of the Act empowered the Coroner to hold an Inquest into the cause of death of a person who has died under any of the circumstances mentioned therein with the help of a jury, that Section 13 empowered him to summon a jury for that purpose, that Section 17 further empowered him to summon all persons acquainted with the circumstances attending the death to give evidence as witnesses, that Sections 19 and 20 required him to record the evidence of such witnesses on oath, that Section 22 required the Coroner to sum up all the evidence that had been so recorded to the jury and the jury was required to consider and deliver its verdict and that Section 23 required the Coroner to draw up an inquisition according to the findings of the jury. According to Mr. Cooper, these provisions clearly show that the proceeding held by the Coroner would be "judicial proceeding". It is true that the aforesaid provisions go to show that the Coroner has been empowered to do some of the things which a Court ordinarily does while adjudicating upon disputes between the parties before it but all the same the Coroner does not give any final or binding decision under which any right is affected or liability incurred. Therefore, as has been observed in *State of Bombay v. Shirish Pai*, these provisions show that the Inquest has "the trappings of a judicial proceeding" or "the externals of a judicial proceeding" but in the strict sense of the term it cannot be a "judicial proceeding".

9. Secondly, on a careful examination of several provisions of the Coroners; Act, 1871, it will appear clear that the Inquest can. be and often is held in the absence of a suspect and without any notice to him. It is true that u/s 19 of the Act the Coroner is under an obligation to record the statement of the suspect and is further under an obligation to receive evidence on behalf of such suspect, but such obligation arises only if the suspect himself wishes to make a statement and wishes to lead evidence on his behalf and that would be only in cases where he is

present at the Inquest. But the provisions of the said Act conceive of cases where the Inquest can be held even in the absence of the suspect and without any notice to him and more often it is so held. This position has been clearly stated in a decision of this Court in *Emperor Vs. Bhagwandas Tulsidas*, The point that I am emphasising is that even where at such Inquest the suspect is not present the Coroner is required to draw up an inquisition in the prescribed form containing all the details set out in Section 24 of the Act, In other words, it is clear that at such Inquest a finding as to the guilt of the suspect is recorded by the Coroner even in the absence of the suspect. (May be for this very reason no finality is accorded to the findings of the Coroner's jury). Such a position is unthinkable in the case of a judicial proceeding whereat no finding is ever recorded against a party in his absence or without any notice to him.

10. Thirdly, there is some express provision in the Coroners Act which clearly gives an indication that the Inquest proceeding is not a "judicial proceeding" in the ordinary or normal sense of that expression. Section 9(4) of the said Act runs as follows:

Every such inquest shall be deemed to be a judicial proceeding within the meaning of Section 198 of the Indian Penal Code and for the purpose of any such inquest the Coroner shall have and may exercise all the powers of a criminal court u/s 476 and Section 480 of the Code of Criminal Procedure, 1898.

The aforesaid provision contained in Section 9(4) of the Act clearly states that only for a limited purpose, namely, for the purpose of Section 193 of the Indian Penal Code every Inquest is deemed to be a "judicial proceeding", -which in other words means that such Inquest is not a "judicial proceeding" in the strict normal sense of the term nor a "judicial proceeding" for other purposes. If the Inquest proceeding was ordinarily a "judicial proceeding" in normal sense of the term, there would have been no necessity for the Legislature to enact a deeming provision like Section 9(4) in the Act. In my view the said provision clearly furnishes intrinsic evidence in the Act itself that the Legislature did not intend the Inquest proceeding before a Coroner to be a "judicial proceeding" for any other purpose except for the purpose specifically referred to in Section 9(4).

11. Mr. Cooper, however, contended that a deeming provision like the one to be found in Section 9(4) would not necessarily lead to the inference which I am inclined to draw therefrom and according to him the said deeming provision may have been made by the Legislature out of greater caution. In this behalf, he relied upon certain observations of Lord Eedcliffe in an English decision, *St. Aubyn v. Attorney-General* [1952] A.C. 15. The relevant observations run as follows (p. 53):

...The word deemed is used a great deal in modern legislation, Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it

is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.

Relying on these above observations Mr. Cooper urged that a deeming provision as is to be found in Section 9(4) of the Act need not lead the Court to a necessary inference that the "Inquest proceeding" before a Coroner is not a "judicial proceeding" in the ordinary sense of the term. The observations relied upon by Mr. Cooper undoubtedly show that a deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the Legislature has made such a deeming provision. In the English case relied upon by Mr. Cooper, Lord Badcliffe after making the aforesaid observations went on to hold that it was in the last of the three ways (indicated in the observations quoted above) that the deeming provision "was made in Section 58(2) of the Finance Act, 1940, which came for interpretation before the House of Lords. In the present case there are clear indications in the Act itself that the deeming provision in Section 9(4) of the Act was made not out of greater caution nor for including what is obvious but for the purpose of imposing an artificial construction on the expression "judicial proceeding" that would not otherwise prevail for the purpose of Section 193 of the Indian Penal Code. In my view, therefore, the said deeming provision in Section 9(4) of the Act is a clear indication that the Inquest before the Coroner is not a "judicial proceeding" in the ordinary or normal sense of that expression.

12. Mr. Cooper next relied upon a decision of this Court in *In Re: Laxminarayan Timmanna Karki*, where similar Inquest proceedings held by a Magistrate in the mofussil u/s 176 of the Criminal Procedure Code have been held to be "judicial proceedings". In particular he relied upon the following passage of the judgment which appears at p. 1057:

The language of Section 176, in our opinion, makes it clear that the proceeding contemplated by the section is judicial. The Magistrate is empowered to hold an enquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, is invested with all the powers in conducting it which he would have in holding an enquiry into an offence. In our opinion this would bring the proceeding within the meaning of an "inquiry" as defined by Section 4(2)(k) and of a "judicial proceeding" as defined by Section 4(1)(m), Criminal Procedure Code, where a judicial proceeding is said to include any proceeding in the course of which evidence is or may be legally taken on oath.

In view of the above observations he contended that if an enquiry or Inquest held by a Magistrate in the mofussil under Section 176 of Criminal Procedure Code into the cause of death of a person who died under suspicious circumstances has been held to be "judicial proceeding", it stands to reason that a similar Inquest held by the Coroner of Bombay under the Coroners Act, 1871,

should be regarded as a "judicial proceeding". The argument though attractive has, in my view, no substance, for, the decision in *In re Laxminarayan Karki* is clearly distinguishable on the provisions of the Criminal Procedure Code under which the question came in for consideration before this Court. In the first place, it is for the purposes of the Criminal Procedure Code, wherein the expression "judicial proceeding" has been defined in a particular manner, that such inquest or inquiry by the Magistrate u/s 176 has been held by this Court to be a "judicial proceeding" and that too after taking into account the definitions of the two expressions-"inquiry" and "judicial proceeding" as given in the Code. Secondly, it will appear clear that a Magistrate holding an enquiry u/s 176 is invested with all the powers in conducting such an enquiry which he would have while holding an enquiry into an offence and it is by reason of such investment of powers upon a Magistrate that this Court came to the conclusion that such an enquiry would be a "judicial proceeding" within the meaning of that expression as defined by the Criminal Procedure Code. Both these aspects of the matter become apparently clear from and have been emphasised in the very passage on which reliance has been placed by Mr. Cooper. In the present case I am concerned with the question as; to whether an Inquest held by a Coroner under the Coroners Act, 1871, is a judicial proceeding or not for the purposes of the Evidence Act where the expression "judicial proceeding" has not been defined and the normal connotation of that expression has to be taken into account; secondly, no powers similar to the powers conferred upon a Magistrate u/s 176 appear to have been conferred upon the Coroner under the Coroners Act, 1871. This decision, therefore, cannot avail Mr. Cooper for the purpose of canvassing the proposition that an Inquest held by a Coroner under the Coroners Act, 1871, should be held to be a "judicial proceeding" in the normal sense of that expression.

13. Mr. Cooper then contended that in England from where we have borrowed this institution of Coroner these inquest proceedings have always been regarded as "judicial proceedings" and in that behalf he relied upon certain passages in Halsbury's Laws of England, Vol. 8, In para. 833 (on p. 461) of Halsbury's Laws of England, Vol. 8, the statement of law is to this effect:

The Coroner's court is a court of record.

and in para. 920 (on p. 495) it has been stated as follows:

As the judge of a court of record the coroner has power at common law to commit for contempt of court, but, as his court is an inferior court of record, his power is limited in this respect to contempt committed in the face of the court, and does not extend to contempt committed out of court.

These passages are based on two English decisions-one reported in *Garnett v. Ferrand* (1827) 108 E.R. 576 and the other reported in *Mccarey v. Associated Newspapers, Ltd.* [1964] 2 All E.R. 335 and Mr. Copper strongly relied upon these decisions too. It may be stated that in the former case the question that arose was whether any action would lie against a Coroner for anything- done by

him while discharging his functions and it was held that since the Coroner was a Court of record no action would lie against him; in the latter case the question that arose was whether the privilege attaching to a contemporaneous newspaper report of proceedings in a Coroner's Court was an absolute privilege, if the report was a fair and accurate report of what actually happened in the Court and it was held that the Coroner's Court being a public Court and the proceedings being judicial proceedings the privilege was absolute. In any view, the position obtaining under English law and the English decisions on which reliance has been placed by Mr. Cooper would not apply to a Coroner discharging his functions under our Act in this country. It may be that we have borrowed the institution of Coroner from England but there are material differences between the provisions of the English Coroners Act and the provisions of our Coroners Act, 1871, and because of such material differences the position as obtaining under our Act will have to be considered. In the first place, in England the Coroner's Court has always been held to be a Court of record (vide the passage in Halsbury's Laws of England relied upon by Mr. Cooper) and by "Court of record" is meant a Court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony and it has the authority to fine and imprison for contempt of its authority, While such is not the position of the Coroner's Court in India under the Coroners! Act, 187.1. Secondly, as I shall presently indicate, wider powers have been given to the Coroner under the English Acts than those given to the Coroner under our Act; for instance, u/s 5 of the English Coroners Act, 1887, and Section 26 of the English Coroners (Amendment) Act, 1926 the Coroner there has been given the power to commit the suspect straight for his trial if the Inquisition drawn by him charges him with murder, man-slaughter and infanticide, while under our Act no such power has been conferred upon our Coroner; as I have said above, even after an Inquisition has been drawn wherein the guilt of the suspect has been indicated all that the Coroner has been authorised to do is to issue his warrant for the apprehension of the suspect and send him to a Magistrate empowered to commit him for trial. In other words, whereas under the English law the suspect after being found guilty by the Coroner's jury directly incurs a liability of being prosecuted, under our Act no such consequence entails as a result of any adverse verdict being recorded against the suspect. Thirdly, in England, the Coroner's Court being a Court of record has under Common law powers to punish for contempt committed in its face, while express provision is required to be made and has been made in Section 9(4) of our Act to the effect that for the purpose of any such inquest the Coroner shall have and may exercise all the powers of a criminal Court u/s 476 and Section 480 of the Code of Criminal Procedure; similarly, in England a Coroner while discharging his functions enjoys complete immunity against any action for whatever he might say or do during the proceedings before him, but in our Act u/s 41 any Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, is made liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose and Section 42 provides

that no proceeding for any thing done under the Act, or for any failure to comply with its provision, shall be commenced or prosecuted after tender of sufficient amends. This shows that a qualified immunity is enjoyed by the Coroner for which an express provision is required to be made and has been made in our Act. In view of these material differences between the provisions of the English Coroners Acts and the provisions of our Coroners Act the position obtaining- in India on the nature of inquest proceeding before a Coroner would not be the same as in England and, therefore, it is impossible to accept Mr. Cooper's contention that because in England the inquest proceedings before a Coroner has always been regarded as "judicial proceedings" it should be so regarded here under the provisions of our Act. In view of the aforesaid discussion and for the reasons indicated above, I am of the view that an inquest proceeding before the Coroner of Bombay under the Coroners Act, 1871, cannot be regarded as a "judicial proceeding" for the purpose of Section 1 of the Evidence Act and that being so, the provisions of the Evidence Act would not apply to such a proceeding".

14. Assuming that I am wrong in my conclusion that the inquest proceeding before a Coroner under our" Coroners Act is not a "judicial proceeding" and even if it were assumed for the purpose of argument that such a proceeding before a Coroner is a "judicial proceeding" and therefore the provisions of the Evidence Act are generally applicable thereto, the question still remains as to whether Section 137 of that Act or the restriction on the right to cross-examine witnesses as contained therein would apply to such a proceeding or not. It is true that u/s 137 the right to cross-examine witnesses has been conferred upon or rather confined to an "adverse party" to the proceeding. But before any one could become an "adverse party" to the proceeding he must first be a party to the proceeding and in my view the legal position under the Coroners Act is quite clear that no one, neither the Police nor the State nor the suspect nor any one else, could be said to be a party to the inquest proceeding. The duties and powers of a Coroner have been set out in Chapter III of the Coroners Act and on a careful examination of the relevant sections appearing in that Chapter it will become clear that it is the Coroner and his jury who are required to hold an inquiry into the cause of an unnatural death and it is with a view to assist the Coroner and his jury to arrive at a proper verdict that the power has been given to the Coroner to receive evidence--oral or documentary--through witnesses who may be acquainted with the circumstances attending the death and there is no question of anybody being a party to such inquiry. In this behalf I may refer to two decisions of this Court. In *Emperor v. Mahomed Yusuf* (1932) 35 Bom. L.R. 1020, Sir John Beaumont has taken the view that such a proceeding before the Coroner is not a proceeding between the prosecutor and the accused. At page 1021 this is what the Chief Justice has observed:

...The proceedings before the Coroner are merely an inquiry into the circumstances leading to the death of the person whose death is under inquiry, and it is impossible to say that the Crown is a party to those proceedings, even if

it can be said that the accused is a party on the ground that he was during those proceedings a suspect.

This decision is an authority for the proposition that the Crown, that is, the State or the Police is not a party to an Inquest proceeding. Though Sir John Beaumont felt that the accused may be a party on the ground that he was during those proceedings a suspect that question did not arise for determination in that case. On the position as to whether a suspect is a party to the proceeding or not, the judgment of Justice Lokur in *Emperor v. Bhagwandas Tulsidas* (No. 2) is quite categorical. After referring to the above quoted observations of Sir John Beaumont, Justice Lokur went on to observe as follows (p. 998):

I respectfully think that even the accused cannot be said to be a party to the proceedings, as in many cases the suspect is not present at the inquest. It is a general inquiry for further action by the police if necessary.

If this is the position of the State or the Police or even of the suspect at the Inquest held by a Coroner, respondent No. 3 or for that matter any other person who is summoned by the Coroner to give evidence cannot be regarded as being any party to such an inquiry. In my view, therefore, neither the State nor the Police nor the suspect nor any witness in the position of respondent No. 3 is a party to the Inquest proceeding much less an "adverse party" thereto. Therefore, even if it were assumed for the purpose of argument that the provisions of the Evidence Act are generally applicable to the Inquest proceeding before a Coroner the provisions of Section 137 or the restriction on the right to cross-examine the witnesses as contained therein would not apply to such proceeding. In this view of the matter, it is difficult to accept the contention of Mr. Cooper that respondent No. 3 not being an "adverse party" is not entitled to cross-examine the witnesses that may be examined by the State or the Police.

15. The position that arises therefore is that the Inquest proceeding before the Coroner is not a "judicial proceeding" in the strict sense of the term and, therefore, the provisions of the Evidence Act would not apply to such a proceeding. In any case, there being no rival or contending parties as such before the Coroner no question of applying the provisions of Section 137 of the Evidence Act to such proceeding arises.

16. Mr. Cooper next contended that if the Evidence Act were not to apply to a proceeding before the Coroner, the principles of natural justice would apply and it would be in consonance with the principles of natural justice to allow only such persons who have some sort of legal interest in the matter of death of the deceased to participate in the proceeding by leading evidence or by cross-examining the witnesses and he urged that simply because respondent No. 3 is the mother of the deceased and as such has sentimental interest in her daughter's death, she could not be allowed to take part in the proceeding as a party or be allowed to cross-examine the witnesses that may be tendered by the State or the Police. At the outset I may make it clear that in the present case

respondent No. 3 who happens to be the mother of the deceased would be having sufficient legal interest in the cause of death of her daughter for it cannot be disputed that she is one of the heirs mentioned in the Fatal Accidents Act who can institute proceedings for recovering damages arising out of the wrongful act on the part of the petitioner if at all one was established and as such would be entitled to participate in the proceedings or cross-examine the witnesses. But in my view having regard to the object of the inquiry, the nature and scope thereof it is really not necessary that a person should have some legal interest in the cause of death of a deceased before he could be allowed to participate in that proceeding or cross-examine the witnesses. It is clear that an inquest into the cause of an unnatural death is nothing but a public inquiry held by the Coroner with the help of a jury and one of the objects of holding such public inquiry is to satisfy the public conscience that such unnatural death is not hushed up. Even where it is of an accusatory character, in essence it is a fact finding inquiry into the cause of unnatural death and the object of the inquiry being what I have stated above, it is absolutely necessary that the Coroner holding such inquiry must have all powers necessary for the purpose of eliciting the true cause of such unnatural death; and for this purpose, necessary powers have been conferred upon the Coroner to collect all materials and evidence from whatever source and in such manner as he may think proper and in that process it would be difficult to put any limitation or restriction on the discretion that has been vested in him in that behalf, Section 8 enjoins upon a Coroner a duty to view and examine the dead body of a person whose death is under inquiry, Section 9 enjoins upon him a duty to hold an Inquest with the aid of a jury into the cause of death of a person who might have died under any of the circumstances mentioned therein, Section 16 empowers the Coroner to make proclamation for the attendance of witnesses and Section 17(7) which is material runs as follows:

It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses. The Coroner shall inquire of such circumstances and the cause of death, and if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

Under Section 18 the Coroner is empowered to direct a post-mortem examination of the dead body if he thinks it necessary to ascertain the cause of death and u/s 19 the Coroner is required to record all evidence of the witnesses on oath and is further required to record the statement of the suspect if he wishes to make any and also to receive evidence that may be furnished by the suspect. It is obvious that all these duties and powers have been enjoined and conferred upon the Coroner solely with a view to arrive at the true cause of an unnatural death. It would stand to reason therefore that during the course of such inquiry if the Coroner feels that some one should be represented at the inquest he must have the power and discretion to allow him to be represented,

and if the Coroner also feels that certain facts touching the circumstances under which the death has occurred could be elicited by the process of cross-examination he must have the power and discretion to get those facts on record by the process of cross-examination. At this stage I may state that Mr. Cooper fairly conceded that if the Coroner himself wanted to undertake such cross-examination of the witnesses tendered by the State or the Police or by the suspect it would be open to him to do so and he may for that purpose take assistance from persons like respondent No. 3. He however urged that the Coroner could not permit other persons like respondent No. 3 who have been cited as witnesses at such inquiry to undertake such cross-examination. In other words, even according to Mr. Cooper, a person cited to give evidence at such inquiry, if he has in his possession materials on the strength of which questions in cross-examination could be put to witnesses tendered by the State or the Police, can suggest to the Coroner what questions should be put in cross-examination and the Coroner would be at liberty to put those questions, but he himself cannot be permitted to do the cross-examination. One fails to understand as to why the Coroner should resort to such circuitous method of cross-examination and not allow the person who is cited as a witness to undertake cross-examination himself if the Coroner feels that such latter course would be more effective and conducive to eliciting the true cause of the unnatural death. Of course, the Coroner would be and should be vigilant to see that the permission or leave granted to do such cross-examination is not abused by such person. In my view, on both the questions as to who may be allowed to participate in the proceeding and who may be allowed to examine and cross-examine witnesses at such inquest the matter must be left to the discretion of the Coroner, the principal guide-line in the exercise of such discretion being that such participation and/or examination and cross-examination is necessary for the purpose of eliciting the true cause of the unnatural death which is under inquiry. That being the principal guide-line, any person, irrespective of whether he is a friend or relative of the deceased and irrespective of whether he has legal interest in the death of the deceased, who is acquainted with and can throw light on the circumstances attending such unnatural death and about whose bona fides the Coroner is satisfied, can be regarded as a person who is properly and sufficiently interested in such death and the Coroner has the discretion to allow such person to participate and/or to examine and cross-examine witnesses-such of them as he thinks proper and to the extent he thinks proper.

17. Mr. Vakil for respondent No. 2 invited my attention to certain passages in Halsbury's Laws of England, Vol. 8 on the topics: "Representation at inquest" and "Examination of witnesses" at such inquest. In particular he referred to paras. 918 (on p. 494), 942 (on p. 504) and 988 (on p. 522), the last of which deals with the topic of examination of witnesses at inquests in cases of industrial accident and diseases, and relying on the statement of law in these paragraphs he urged that any person properly interested in the death of the deceased could be allowed to participate in the proceedings and it would be in the discretion of

the Coroner to allow such person either to participate in the proceedings or to cross-examine the witnesses subject to the power of the Coroner to disallow irrelevant or improper questions. In my view, the position in England, both on the question as to who should be allowed to be represented at the Inquest and who should be allowed to cross-examine the witnesses at the Inquest is governed by various Statutes and statutory rules made in that behalf. For instance, as far as Inquests in cases of Industrial Accidents and Diseases are concerned, there are various enactments, such as Metalliferous Mines Regulation Act, 1872, Coal Mines Act, 1911, Explosive Act, 1875, Factories Act, 1937, Petroleum (Consolidation) Act, 1928 etc. which make statutory provisions as regards the person who may be allowed to be represented at the Inquest and who may be allowed to question witnesses. As regards the Inquests into the deaths in other cases the matter is governed by the Coroners Rules, 1953, framed by Lord Chancellor in exercise of the powers conferred upon him in that behalf by the Coroners Act. In the absence of any such statutes or statutory rules making similar provisions in India, the statement of law on these topics as set out in the aforesaid paragraph of Halsbury's Laws of England (Vol. 8) cannot be resorted to for the purpose of deciding those questions here. Since I have taken the view that neither the State nor the Police nor the suspect nor any one is a party to the Inquest proceeding before the Coroner here and, since the Coroner has been empowered to receive all evidence-oral or documentary-through the witnesses whom he has summoned on the basis that they are acquainted with the circumstances attending the death and are likely to throw light on the cause of death, the position of these witnesses could, though not strictly, be likened to Court witnesses in a judicial action. It is well established that a witness called by the Court can only be cross-examined by leave of the Court, and the practice which is usually followed in permitting cross-examination of such Court witnesses has been enunciated in *Concussion v. Disborough* [1894] 2 Q.B. 816. The head-note in the report of that case runs as follows:

At the trial of an action the judge has power to call and examine a witness who has not been called by either of the parties, and, when he does so, neither party has a right to cross-examine the witness without the leave of the judge.

If the evidence of the witness given in answer to questions put to him by the judge is adverse to either of the parties, leave should be given to that party to cross-examine the witness upon his answers, but a general cross-examination ought not to be permitted.

Lord Esher, Master of the Rolls, has observed as follows (p. 318) :

...If there be a person whom neither party to an action chooses to call as a witness, and the judge thinks that that person is able to elucidate the truth, the judge, in my opinion, is himself entitled to call him; and I cannot agree that such a course has never been taken by a judge before. When a witness is called in this way by the judge, the counsel of neither party has a right to cross-examine him without the permission of the judge. The judge must exercise his discretion

whether he will allow the witness to be cross-examined. If what the witness has said in answer to the questions put to him by the judge is adverse to either of the parties, the judge would no doubt allow, and he ought to allow, that party's counsel to cross-examine the witness upon his answers. A general fishing cross-examination ought not to be permitted.

Since all the witnesses are being proclaimed and summoned by him as his witnesses at the Inquest, on the questions as to who should be permitted to cross-examine the witnesses and to what extent and in what manner the Coroner may well exercise his discretion in the manner indicated in the aforesaid observations of Lord Esher, the over-riding consideration however being that such cross-examination is necessary for the purpose of eliciting the true cause of unnatural death which is under inquiry. In this view of the matter, the order passed by the Coroner in the instant case permitting respondent No. 3 to participate in the proceedings and to cross-examine the witnesses who may be tendered either by the State or the Police or by the petitioner (suspect) is justified and cannot be interfered with. Rule is, therefore, discharged. No order as to costs.