
(1953) 10 OHC CK 0015
In the Orissa High Court
Case No : Government Appeal No. 5/52

The State	Vs	APPELLANT
Maheswar Alias Mahi Dehuri		RESPONDENT

Date of Decision : 29-10-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 154, 160, 161, 342, 428
Evidence Act, 1872 — Section 90
Penal Code, 1860 (IPC) — Section 211, 224

Citation : (1954) 20 CLT 28

Hon'ble Judges : Narasimham, J; Mohanty, J

Bench : Division Bench

Advocate : Asst. Govt., M. Mohanty, R.K. Ghose and R. Das, for the Appellant;
B. Mohapatra and S. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This appeal and the three revision petitions arise out of the judgment of Sri P.R. Chandra, Sub-Divisional Magistrate, Sadar, Baripada in a case u/s 224 I.P.C. initiated by the police of Rasgovindpur out-post in Mayurbhanj district against one Maheswar Dehuri alias Mahia Dehuri.

The learned Magistrate acquitted Maheswar Dehuri and held that the case was a false one instituted by Circle Inspector J.C. Chakravarty (P.W. 1) with the help of a Sub-Inspector of Police named K.M. Das (P.W. 2) and the then District-Superintendent of Police, Mayurbhanj, flamed Sri S.K. Ghose. The learned Magistrate then passed severe strictures on the conduct of these police officers in having thus engineered a false case against an innocent person. The State Government preferred this appeal against the order of acquittal passed by the trying Magistrate and the three police officers, namely, Circle Inspector Sri J.C. Chakravarty, Sub-Inspector Sri K.N. Das and the District Superintendent of Police Sri S.K. Ghose, filed the revision petitions for expunging some of the observations from the judgment of the Magistrate which adversely reflected on

their conduct.

2. One of the important points urged by the learned Government Advocate at the commencement of the hearing was that the learned trying Magistrate passed strictures on the District Superintendent of Police, Sri S.K. Ghose without giving him an opportunity of explaining his conduct by giving evidence in the case. It appears that Sri S.K. Ghose was cited as one of the defence witnesses by the accused in that case. He was, however, very reluctant to appear as so witness before the learned Magistrate and went to the length of writing a, confidential D.O. to him (No. 706 dated the 80th September, 1951) alleging that he was summoned as a defence witness by the defence Pleader Sri Kaminikanta Patnaik from purely mischievous motives. He was subsequently given up by the defence. But when the other defence witnesses gave evidence which adversely reflected on the conduct of Sri S.K. Ghose in connection with the case, a petition was filed by the Prosecuting Inspector before the learned trying Magistrate for the examination of Sri S.K. Ghose as a Court witness. The learned Magistrate rejected this prayer. The Government Advocate urged that having has declined to examine Sri S.K. Ghose as a witness and thus having deprived him of the opportunity of explaining his conduct in connection with the investigation of this case it wag not fair on the part of the learned trying Magistrate to have passed such serious adverse comments against his conduct. He, therefore, urges that this Court should exercise its powers u/s 428 Code of Criminal Procedure and permit the State to examine Sri S.K. Ghose before the appellate Court. We considered that for the ends of justice Sri S.K. Ghose should be examined even though ab the appellate stage u/s 428 Code of Criminal Procedure iuasmuch as the success or failure of the case against Maheswar is closely interlinked with the conduct of Sri S.K. Ghose during the investigation of the case. Sri S.K. Ghose was, therefore, examined in the appellate Court and cross-examined by the learned Counsel for the other side. The Government Advocate further requested the appellate Court to permit him to adduce additional evidence such as the confidential diary of Sri Nandagopal Banerjee (D.W. 11) the station-diary of Morada police station and some other papers. Bat we rejected this prayer inasmuch as it was not proper to utilise Section 428 Code of Criminal Procedure to fill up the gaps in the prosecution evidence. These papers were available before the Prosecuting Inspector and they should have been proved in the lower Court while adducing evidence on behalf of the Prosecution or else when Sri Nandagopal Banerjee (D.W. 11) was cross-examined. We are also no satisfied that for the ends of justice these documents should be admitted in evidence at the appellate stage.

3. Rasgovindpur is a police outpost attached to Morada police station in the district of Mayurbhanj. This out-post was close to Amarda. Refugee Camp where the Bengal refugees had been collected and police help was presumably required frequently for the maintenance of peace in that area. From 23-4-1951, one Sri D. Gartia (D.W. 12) was the officer-in-charge of Rasgovindpur out-post. Sri K.M. Das (P.W. 2) who is also an officer of the rank of a. Sub-Inspector of police was

also then attached to Rasgovindpur out-post as a special officer. As Rasgovindpur was only an out post the procedure for instituting cognizable cases reported there was as follows The F.I.R. of the informants was taken down on plain paper and then sent to Morada police station for instituting formal F.I.R. in the printed form available here.

The investigation of the case was, however, taken up by the officer-in-charge of Rasgovindpur out-post itself. A Station diary book in the prescribed form was, however, maintained at Rasgovindpur out-post. One Sri J.C. Chakravarty (P.W. 1) was then working as the Inspector of Police attached to Amarda Refugee Camp. There was another Circle Inspector (Circle "B") under whose Jurisdiction both Rasgovindpur and Morada lay; but it appears that Sri J.C. Chakravarty also had concurrent jurisdiction in that area. For the purpose of this case, however, it is unnecessary to enter into an elaborate discussion about the respective jurisdictions of the two Inspectors of Police.

4. On 26-4-51, a marwari of Amarda. Road lodged au information at about 1 p.m. at Rasgovindpur out-post regarding the commission of dacoity on the highway between Nalgaja and Amarda Railway station. He was not able to give the name of any of the dacoits. The F.I.R. after being recorded at Rasgovindpur outpost was sent to Morada police station where the formal F.I.R. was drawn up at 6 a. m. on 27-4-51 (Exts. I and 11). In the station diary book of Rasgovindpur out-post (see Ext. E) a summary of the information given by the Marwari was entered as required by the last portion of Section 154 Code of Criminal Procedure. The investigation of this dacoity case was taken up by S.L. Sri D. Gartia as the officer-in-charge of the out-post. He was assisted in the investigation by S.I. Sri K.M. Das (P.W. 2) Inspector Sri J.C. Chakravarty (P.W. 1) supervised the investigation of that case. Till the 28th April, 1951 no clue was obtained) but in the evening of the 28th, on receipt of some information, accused Maheswar Dehuri Bond some other persons were brought to the out-post and closely interrogated as to what happened subsequently. There is a clear conflict in the evidence of the police officers themselves.

5. The prosecution version & put forward by Inspector Chakravarty (P.W. 1) and S.I. K.M. Das (P.W.2) is that Maheswar was first closely interrogated by P.W. 1 at the residence of P.W. 2 about 100 ft. away from the out-post and there Maheswar confessed his participation in the commission of dacoity. Thereupon P.W. 2 arrested him and then handed him over to S.I. Gartia with instructions to keep him in custody in the out-post premises. S.I. Gartia kept Maheswar at the verandah of the out-post in charge of two constables named Chintamani Rath and Sansar Maharana, (D.Ws. 7 and 8) and returned to the residence of S.I. K.M. Das where Inspector Chakravarty was then engaged in interrogating two other suspects named Gangadhar Giri and Purusottam. After questioning them for some time the Inspector wanted to confront them with Maheswar and then he deputed Bhima Choukidar (P.W. 7) to fetch Maheswar from the out-post. Bhima returned saying that Maheswar had escaped from the custody of the constables.

The Inspector at once rushed to the out-post and found that Maheswar was not there and thereupon drew up an F.I.R. on plain paper (Ext. 2) u/s 224 I.P.C. against Maheswar on his own statement and at once deputed S.I. K.M. Das (P.W. 2) and S.I. Gartia (D.W. 12) to trace out Maheswar.

6. The other version as given out by S.I. Gartia (D.W. 12) is as follows: At 4 p.m. on 28-4-51 S.I. Gartia left Rasgovindpur out-post for Amarda. But on receipt of an urgent intimation from Inspector Chakravarty he returned to Rasgovindpur and went to the house of S.I. K.M. Das at about 6 p.m. There Inspector Chakravarty told him that one of the suspects in the dacoity case was partly confessing and that he would have been arrested but for the fact that he went away from the verandah of the out-post where he was sitting. Then all the police officers made a search for the suspect; but could get no trace of him. Then as instructed by Inspector Chakravarty, S.I. Gartia rushed to Amarda Railway Station and sent a telegram (Ext. 5) asking 8011 concerned to be on the look-out for the suspect Maheswar and to detain him, if found. A descriptive roll of Maheswar was also given in the telegram and according to S. I Gartia the descriptive roll of the suspect was given to him by Inspector Chakravarti. S.I. Gartia emphatically denies to have taken any part in escorting Maheswar from the residence of S.I. K.M. Das to Rasgovindpur out-post on the 28th evening or to have left him in charge of two constables there.

7. On the 29th April, 1951 at about 9 a.m. the District Superintendent of Police Sri S.K. Ghose arrived at Rasgovindpur for the purpose of supervising the investigation of the dacoity case. He stayed for sometime in the house of one Mr. Bhattacharya who was the Commandant-in-charge of the Amarda Refugee Camp. There is a sharp conflict in the evidence of the Police witnesses regarding the part played by Sri S.K. Ghose on the 29th when he was at Rasgovindpur. According to the prosecution Sri Ghose supervised the dacoity case and also the cases u/s 224 I.P.C. against Maheswar in the usual way. At about 6 p.m. on the 29th he went to the out-post and tried to see the station-diary for the purpose of ascertaining the nature of the entries made in connection with the escape case. But the A.S.I. in charge Sri D.K. Sahu (D.W. 10) would not produce it before the S.P. saying that it was with S.I. Gartia. S.I. Gartia went inside his house close by on the pretext of bringing out the station diary; but did not come out. The S.P. had then no other option but to return to the house of the Commandant with instructions to Inspector Chakravarty to somehow persuade S.I. Gartia to produce the station diary. The Inspector was, however unsuccessful. Then the S.P. after orally passing order for the suspension of S.I. Gartia returned to Baripada.

8. The counter-version, however, is to the effect that Superintendent of Police Sri S. K. Ghose played a discreditable part in concocting a false case u/s 224 I.P.C. and antedating it. According to the defence, at about 4 or 5 p.m. on the 29th April, 1951, Sri Ghose himself dictated a draft F.I.R. u/s 224 I.P.C. which was recorded by Inspector Sri Nanda gopal Banerjee (D.W. 11) on plain paper (Ext.

H). It was then handed over to the S.P. by Sri Banerjee. The plain paper F.I.R. (Ext. 2) is a mere copy of Ext. H. except for some minor variations and the case of the defence is that Inspector Chakravarty copied out Ext. 2 from what the S.P. had himself dictated to Sri Banerjee in Ext. H. Having thus prepared the F.I.R. between 4 or 5 p.m. on 29-4-51 Inspector Chakravarty ante dated it so as to make it appear that it was recorded by him at about 9 p.m. on 28-4-51. But he and the S.P. fully realised that if the substance of the F.I.R. was not shown in the station-diary book of Rasgovindpur out-post on the 28th at 9 p.m. the fraud would be immediately detected. As a matter of fact the station-diary for the 28th had already been closed early in the morning of the 29th and carbon copies of that date had already been forwarded to the superior police officers. Having thus ante-dated the F.I.R. the next attempt of the S. P. and Inspector Chakravarty was to persuade S.I. Gartia to change the entries in the station diary of the 28th so as to make it appear that the F.I.R. u/s 224 I.P.C. as in fact, recorded at 9 p.m. on the 28th S.I. Gartia was, however, unwilling to make such an alteration without sufficient safeguards because he knew that he would subsequently get into trouble in view of the fact that the carbon copies of the stationdiary entries dated 28-4-51 had already been despatched to superior police officers. An attempt was made to persuade A.S.I. Sri D.K. Sahu (D.W. 10) to burn the original station-diary and to prepare a fresh one. But he was also not agreeable to this suggestion. S.P. Sri Ghose, however, thought that by bringing S.I. Gartia to the headquarters of the district, i.e. Baripada, he may by threat and coercion induce him to alter the station-diary entry. The defence case is that for this purpose he sought the help of Dy. S. P. Sri Sanatan Panda (D.W. 9) who belongs to the same district as S.I. Gartia (Sambalpur). The evidence of this Dy. S.P. (D.W. 9) is to the effect that on the 29th night the S. P. after returning to Baripada informed him on the phone about the escape case and suggested that the station-diary, personal diary and the case diary would have to be changed and also told him that S.I. Gartia, Inspector Chakravarty and S.I. K.M. Das would be coming to Baripada on the next day for discussions. The S. P. further admitted before the Dy. S.P. that he had dictated the draft F.I.R. in that case and that it would be sent to Morada police station for being registered all the next day (30-4- 51) also the S.P. and the Dy. S.P. discussed the case. On 1-5-51 the police officers from Rasgovindpur arrived at Baripada and all of them accompanied by the Dy. S.P. went to the residence of the S.P. at Baripada at about 4 p.m. There the S.P. again suggested to S.I. Gartia to alter the station-diary so as to conform to the F.I.R. The Dy. S.P. further stated that S.I. Gartia was willing to change the station-diary provided the carbon copies of the original entry of the 28th April were returned to him so that the alteration may not be detected. This was said to have so much enraged the S.P. that he threatened to put him into trouble. Subsequently, S.I. Gartia was relieved of the charge of Rasgovindpur out-post and placed under suspension. Similarly, A.S.I. D.K. Sahu (D.W. 10) was also reverted as a constable on 17-5-51 and posted to Rairangpur. According to the defence, these police officers were victimised by the S.P. because they would not agree to change the station-diary entry of the 28th with a view to help the S.P.

9. This is a unique case in several respects. The police witnesses are divided into two parties- one party headed by S.P. Sri Ghose supporting the prosecution case and the other party headed by Dy. S.P. Sri Sanatan Panda (D.W. 9) supporting the defence case. Of the various police officers who were at Rasgovindpur, Inspector Chakravarty (P.W. 1) and S.I. K.M. Das (P.W. 2) supported the prosecution case; whereas S.I. Gartia. (D.W.12) A.S.I. D.K. Sahu (D.W. 10) and constables Chintamani Rath and Sansar Maharana (D.Ws. 7 and 8) have supported the defence case. To crown all, Inspector Nandagopal Banerjee of the C.I.D. (D.W. 11) who had nothing to do with the district police of Mayurbhanj has come forward as a defence witness and stated that he wrote the draft F.I.R. (Ext. H) at the dictation of the S.P. The case against Maheswar appears to have been relegated to the background and the main question was whether S.I. Gartia A.S.I. Sahu and the two constables were guilty of dereliction of duty in allowing Maheswar to escape or else whether S.P. Ghose concocted a false case against Maheswar not primarily for the purpose of securing his conviction for an offence u/s 224 I.P.C. but to punish departmentally S.I. Gartia and his subordinates for alleged dereliction of duty.

10. Two important questions have to be decided in this appeal. Firstly, was Maheswar arrested by the Police at the residence of S.I. K.M. Das on the 28th April, 1951 as stated by Inspector Chakravarty? Secondly, did he escape from lawful custody while being detained at the verandah of the out-post at Rasgovindpur.

11. The fact that Maheswar was, brought to Rasgovindpur from his village in the evening of the 28th and interrogated in connection with the dacoity case is admitted, In Maheswar's confession before a Magistrate (Ext. 6) recorded on 16-5-1951 he stated that he was brought to Rasgovindpur out-post and assaulted by a Police officer and also by Bhima Choukidar. He also admitted that after assault he sat on the verandah of the out post and the two constables sat by his side. But he stated that when the two constables were going about hither and thither he ran away from the place and returned home. The prosecution proved this confession apparently in the hope that it would support the evidence of Inspector Chakravarty about the arrest and escape of Maheswar from custody. The defence also seems to have been very touch unnerved by this confession and hence elaborate attempts were made to show that S.I. K.M. Das was hovering outside the Court-room of the Magistrate who recorded the confession and that Police influence was not removed when the confession was being made. There seems doubtless some justification for the finding of the trying Magistrate that S.I. K.M. Das (P.W. 2) was hovering round the Court premises at Baripada when accused Maheswar's confession was recorded by Sri U.C. Misra (P.W. 10) on 16-5-1951 But I do not think that the confession was made under police influence. The Magistrate took care to remove all police officers from the Court-room and administered the usual warning to Maheswar. Moreover, in the confession Maheswar asserted that he was assaulted by the police and the Choukidar at Rasgovindpur out post. If he was really under police influence he

would not have thus exposed the police. I, therefore see no reason to hold that the confession was not made voluntarily. The next question is whether It is true. The prosecution examined one Chaita Behera (P.W. 3), a relation of Maheswar, for the purpose of corroborating the story a given out in the confession. This witness also stated that Maheswar told him that he was assaulted in thana and that he came away from the verandah of the thana where he was made to sit. Thus prior to the making of the confession on 16-5-51 Maheswar had informed his relation Chaita Behera. (P.W. 3) that he was assaulted at Rasgovindpur out-post by the police and that he ran away from the thana. The fact that he was taken to Rasgovindpur out-post that evening and that he went away without at any rate obtaining be permission of the police is amply corroborated by the telegram (Ext 5) Bent by S.I. Gartia to Amarda Road Railway Station. The contents of this telegram have not been challenged by either side. The telegram purports to have been issued at 9.55 p.m.from Amarda Railway Station which is about five miles from Rasovindpur out-post. It may, therefore, be safely inferred that sometime between 8-30 to 9 p.m. on the 28th April the police at Rasgovindpur knowing that Maheswar had disappeared from the thana were takin steps to trace him out. But this circumstance by itself will not suffice to prove the prosecution case. It must be further established that Maheswar was in lawful custody at the time of his going away from the out-post. Inspector Chakravarty was fully away of the necessity of proving this essential element for an offence u/s 224 I.P.C. He, therefore, staled that Maheswar first confessed his guilt before him at the residence of S.I. K.M.D. and then the latter arrested him and entrusted him with Sr Gartia. S.I. K.M. Das has doubtless tried to support Inspector Chakravarty on this point and the prosecution has also relied on the entries in the personal diaries [Exts 7, 7(1), 8 and 8(1)] of there two police officers to corroborate their evidence in Court. But I think he evidence adduced by the prosecution itself is sufficient to show that the so-called arrest of Maheswar at the residence of S.I. K M. Das is a myth. According to Inspector Chakravarty, Maheswar first confessed his guilt and then he wag arrested, He emphatically denied the suggestion that Maheswar was merely interrogated and not arrested. The necessity of introduction the story about Maheswar first confessing his guilt before the police officer is obvious, u/s 160 Code of Criminal Procedure a police officer is empowered to require the attendance before him of any person who, in his opinion, appears to be acquainted with the circumstances of the case and such person is bound to attend when so required. Again u/s 161 Code of Criminal Procedure such person is bound to answer all questions which may be put to him by the police officer. Hence, Maheswar"s coming to the out-post, whether escorted by Bhima Choukidar (P.W. 7) or not and his interrogation by Inspector Chakravarty would not necessarily mean his arrest but would only show that he was complying with the provisions of Sections 160 and 161 Code of Criminal Procedure. The power of the police to arrest a person who is suspected to have committed a. cognizable offence is derived from Section 54(1) Code of Criminal Procedure Clause 1st of that Sub-section says:

Any police officer may, without order from a Magistrate or without warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having been so concerned.

The Legislature, though giving wide powers to police officers to arrest persons without a warrant, also provided some safeguards against indiscriminate arrest. This power of arrest can be exercised only (i) if a person is concerned in any cognizable offence, (ii) if a reasonable complaint has been made against him. (iii) if credible information has been received or (iv) if a reasonable suspicion exists. On mere suspicion a police officer cannot arrest a person without warrant. The suspicion must be reasonable or else there must be credible information that the person has been concerned in the commission of a cognizable offence. Doubtless, if Maheswar had been named in the F.I.R. of the dacoity case [Exts. 1 and 1(1)], Inspector Chakravarty could have straightaway arrested him relying on the fact that a reasonable complaint has been made against Maheswar. But as already pointed out, the F.I.R. was against some person unknown. Inspector Chakravarty may be presumed to have been fully aware of the restrictions imposed by the Code of Criminal Procedure against indiscriminate arrest of a mere suspect. It was, therefore, necessary for him to show that prior to his effecting arrest of Maheswar there were reasonable grounds to suspect him. This necessitated his saying that on a Confession made by accused Maheswar he was arrested by S.I. K.M. Das. Hence, if the story that Maheswar confessed his guilt before the police is discredited the story that he was arrested by the police would also be equally discredited. This so-called confession of Maheswar about his participation in the dacoity has been sought to be proved by the evidence of Inspector Chakravarty and S.I. K.M. Das. But it is completely disproved by the judicial confession of Maheswar (Ext. 6) before a Magistrate and by the evidence of Chaita Behera. (P.W. 8) who was also examined by the prosecution. Maheswar clearly stated before a Magistrate that he was assaulted at the out-post. If, as stated by Inspector Chakravarty) he had confessed his guilt a few minutes before at the residence of S.I. K. M. Das there is no reason as to why he should be assaulted after having been brought to the out-post. On the other hand, the fact that he was assaulted at the out-post strongly supports the defence case that in fact he did not confess his guilt, before the police and the assault on him by the police was made with a view to extort a confession. Thus from the evidence adduced by the prosecution itself (Ext. 6 and P.W. 3) it is clearly established that Maheswar could not have confessed his guilt before Inspector Chakravarty and S.I. K.M. Das at the latter's residence and that on the other hand, he was taken to the out-post and given some beating in the hope that he would confess his guilt. The Government Advocate, however, drew my attention to the evidence of one Lokanath Rout (P.W. 6) who stated in examination-in-chief that on Maheswar's admission at the residence of S.I. K.M. Das he was directed to be taken to the out-post and put in the hazat. This witness, however, does not appear to be a reliable witness. In cross-examination

he has practically destroyed the prosecution case by saying that accused Maheswar was not arrested at the residence of S.I. K.M. Das, thus completely contradicting the evidence of Inspector Chakravarty and S.I. K.M. Das. Moreover, from the evidence of P.W. 1 it is clear that there is no look-up (hazat) at the out-post and S.I. K.M. Das could not have directed S.I. Gartia to put Maheswar in the hazat as stated by this witness. Doubtless, Choukidar Bhima Sahu (P.W. 7) has tried to support P.Ws. 1 and 2. But his evidence is practically on the same footing as that of P.Ws. 1 and 2.

12. In the personal diaries of P.Ws. 1 and 2 there is a material discrepancy about the circumstances under which Maheswar was arrested, Thus in the personal diary of P.W. 1 [Exts. 7 and 7(1)] the following entry is found:

Gangadhar Giri, Maheswar Dehuri and Purusottam were brought to the O.P. On suspicion in connection with the dacoity case, Remained engaged in interrogating them one by one along with the S.I. K.M. Das They made a confession regarding their complicity in the case, so they were arrested at 7 p.m.

In the personal dairy of S.I. K.M. Das, however, [Exts. S & S(1)] the corresponding entry is as follows:

Gangadhar Giri, Purusottam Patra and Maheswar were examined in the above case. As Maheswar confessed his guilt implicating all the above, they all are arrested.

Thus according to Inspector Chakravarty all the three suspects, namely, Gangadhar Giri, Maheswar and Purusottam confessed their guilt and hence they were arrested; whereas according to S.I. K.M. Das, Maheswar alone confessed his guilt implicating the other suspects also and, therefore, all the three of them were arrested. This material discrepancy in the personal diaries of the two police officers said to have been recorded on the very next day (29-4-51) must throw considerable doubt on the story about any confession having been made by any of the suspects. Though the two police officers have proved the entries in their personal diaries they have given no explanation to account for the discrepancy. This discrepancy coupled with the judicial confession of Maheswar (Ext 6) about his having been assaulted at the out-post leaves no doubt in my mind that he did not confess before the police as stated by P.Ws. 1 and 2. The story that he was arrested at the residence of S.I. K.M. Das cannot also be believed as it is closely linked up with the truth or otherwise of the confession made by Maheswar before the two police officers.

13. The learned Government Advocate drew our special attention to the admission made by Maheswar in his judicial confession (Ext. 6) to the effect that two constables were sitting by his side while he sat on the verandah of the out-post and that he ran away from the place when they were moving about hither and thither. He urged that the statement itself was a clear admission of escape from lawful custody and that it corroborated the evidence of P.Ws. 1 and 2. I am, however, unable to accept this argument. Merely because a person is brought to

the thana for the purpose of interrogation it cannot be said that he was under lawful custody, even though two constable may be Sitting by his side, Under Sections 160 and 161 Code of Criminal Procedure a person is bound to Come to the thana for the purpose of interrogation when required by the police. It is only after he has been lawfully arrested that the question of custody arises. If the story of Maheswar's confession before the police and his arrest at the residence of S.I. K.M. Das is disbelieved the mere fact that he was kept at the out-post with two constables on either side after an unsuccessful attempt was made to extort a confession from him by giving him some beating does not lead to any inference that he was under lawful custody. The prosecution has also relied on the statement u/s 342 Code of Criminal Procedure (Ext. 9) made by Maheswar on 8-9-51 before a Magistrate in connection with the parent dacoity case for the purpose of proving that he was under arrest and that he escaped from custody. The question and answer material for this purpose may be quoted below:

Q-Tumbhe 28-4-1951 tarikhare arrest hoi Rasgovindpur police station ru luchi palai gala? (Did you run away stealthily from Rasgovindpur police station after being arrested on 28th April; 1951?)

A. Mada bhayare chaligali. (For fear of beating I ran away).

It was argued that the said answer involved an implied admission that Maheswar was arrested and that he escaped from custody. No such inference can, however, be fairly made from the answer. The question consisted of two parts namely, his arrest and his subsequent running away from the out-post. Maheswar's answer was that he ran away because of hid fear of assault. It seems to be an answer only to the second part of the question and it will be too fanciful to say that it involves an admission that he was arrested first. On the other hand it would strictly corroborate his judicial confession (Ext 6) to the effect that he was first assaulted at the out-post.

14. For the aforesaid reasons I would, relying on the judicial confession of Maheswar (Ext. 6), the evidence of P.W. 3 and the two telegrams (Exts. 4 and 5) sent from Amarda. Railway Station, hold that though Maheswar was brought to Rasgovindpur out-post in the evening of the 2 the April, 1951 for the purpose of interrogation he was not arrested nor detained in custody and that he ran away from the place because he was given some beating and he apprehended some more beating if he remained there. The charge u/s 224 I.P.C. must, therefore, fait.

15. This conclusion necessarily involves the further conclusion that the contents of the F.I.R. (Ext. 2) regarding the confession before the police of Maheswar at the residence of S.I. K.M. Das, his arrest here and his subsequent escape from the outpost are not true. The next question is whether such an untrue F.I.R. was instituted by Inspector Chakravarty (P.W. 1) on his own initiative at 9 p.m. on 28-4-51 as stated by him or else whether it was instituted sometime after 4 p.m. on 29-4-51 at the instance of S.P. Sri S.K. Ghose himself. On this question the

evidence of Inspector Nandagopal Banerjee (D.W. 11) is decisive. According to him, the draft of the F.I.R. (Ext. H) was written by him at the dictation of the S.P. himself at about 4 p.m. on 29-4-51 at the residence of the Commandant Mr. Bhattacharya at Rasgovindpur. He handed it over to the S.P. The F.I.R. (Ext. 2) is practically a verbatim copy of Ext. H except for some minor variations in the last portion. If Inspector Banerjee is believed it is obvious that the S. P. himself dictated the draft F.I.R. and subsequently got it copied out by Inspector Chakravarty. Inspector Banerjee's evidence was attacked as unreliable; but I would agree with the learned lower Court that there is absolutely no ground for rejecting his testimony. He did not belong to the regular police establishment of Mayurbhanj district and consequently it cannot be said that he was in the rival party led by the Dy. S.P. antagonistic to the S.P. On the other hand, he is an Inspector of police of the C.I.D. which has nothing to do with the regular police establishment of Mayurbhanj district and it appears that he was on friendly terms with S.P. Sri Ghose himself. Sri Ghose admitted that he could give no reason as to why Inspector Banerjee should depose falsely against him. His answer to this Court in this connection is as follows:

To my knowledge there is no special reason why Inspector Nandagopal Banerjee should depose falsely against me. I am at a loss why he deposed in this case against me. I had seen his deposition.

16. It was, however, urged that Inspector Banerjee's evidence should be disbelieved for two reasons. Firstly, he was a close associate of Dy. S.P. Sri Sanatan Panda (D.W. 9) and secondly, the defence has failed to explain how it obtained possession of Ex. H. These two arguments are, however, untenable. It is true that Sri Panda. (D.W. 9) admitted in his cross-examination that Inspector Banerjee had worked with him for two years when he was Dy. S.P., C.I.D. and that he was in close touch with him for sometime. But this is no sufficient reason for saying that Sri Banerjee would agree to perjure on oath against such a senior officer as the Superintendent of Police at the suggestion of the D.S.P. In fact, S.P. Sri Ghose himself has not given this as a reason for discrediting Sri Banerjee's evidence. It is nothing unusual for any Government servant during the course of his service to work in close association with another Government servant but that is no ground for holding that he would be so much under the influence of the latter as to agree to perjure on oath in a criminal case, especially in respect of a matter regarding which he has absolutely no interest. For a C.I.D. officer like Sri Banerjee it is wholly immaterial as to whether the case u/s 224 I.P.C. against Maheswar succeeds or not.

17. There is a slight discrepancy between the evidence of Sri Panda (D.W. 9) and Sri Banerjee (D.W. 11) regarding the contents of the talk between them in the evening of the 1st May, 1951 when they all approached the S.P. at Baripada. Sri Panda. Stated that while returning from the S.P.'s residence Sri Banerjee told him that he had taken down the F.I.R., at the dictation of the S.P. on the verandah of S.I. K.M. Das's house on the 29th. Sri Banerjee however has denied

this fact. This is, however, a very minor discrepancy due to lapse of time and I would not attach much importance to it.

18. Similarly the failure of the defence to explain the circumstances under which it came into possession of Ext. H is immaterial. This is not a case where a document which is more than thirty years old u/s 90 of the Evidence Act in which case proper custody of the document must be proved. Somehow or other the defence got possession of Ext. H and the writer of the same, namely, Sri Banerjee (D.W. 11) while admitting his handwriting has also given evidence about the circumstances under which he wrote it. The question ultimately depends on whether his evidence should be believed or not and not on the ability of the defence to explain satisfactorily how possession of Ext. H was obtained. It may be that due to the differences prevailing among the police officers of Baripada the document was surreptitiously taken possession of from the S. P.'s office or from the office of Inspector Chakravarty. But this does not materially affect the credibility of Sri Banerjee's evidence.

19. Apart from the evidence of Sri Banerjee there are two important circumstances which show that the F.I.R. (Ext. 2) could not have been drawn up at 9 p.m. on the 28th April as alleged. In the station-diary book of Rasgovindpur there is no mention about the drawing up of the F.I.R. on the 28th evening. The station-diary is maintained in the usual course of business and u/s 154 Code of Criminal Procedure which has been reiterated in the Orissa Police Manual, as soon as F.I.R. is drawn up the substance of the F.I.R. should be recorded in the station-diary maintained at the out-post. As a matter of fact, when the plain paper F.I.R. of the dacoity case was drawn up on 26-4-51 at 1 p.m. a corresponding entry (Ext. E) was made in the station-diary of that date. Hence, if the plain paper F.I.R. (Ext. 2) had been really drawn up at 9 p.m. on 28-4-51 one would, in the ordinary course, expect so corresponding entry in the station-diary of that date. It was urged that the station diary book was in-charge of S.I. Gartia and A.S.I. Sahu and that they deliberately omitted to make the necessary entry in the station-diary so as to create a good defence against any departmental action that may be taken against them for allowing Maheswar to escape through their negligence. This argument however, is far-fetched. It is admitted by the prosecution that S.I. Gartia was sent away from Rasgovindpur in search of Maheswar on the 28th night itself. He was found at Amarda Railway Station at about 9.55 p.m. that night transmitting the telegram (Exts. 4 Bond 5) for the apprehension of Maheswar. Inspector Chakravarty was then at Rasgovindpur and there was nothing to prevent him from seeing that the necessary entry was made in the station-diary regarding the contents of the F.I.R. Though an Inspector of police he drew up the F.I.R. (Ext. 2) himself exercising the powers of an officer-in-charge of a police station u/s 551 Code of Criminal Procedure. The station-diary entry would, therefore, have been made by him as officer-in-charge or else, at any rate, he would have instructed A.S.I. Sahu to make the necessary entry in the station-diary. He has given no satisfactory explanation as to why though he was present at Rasgovindpur out-

post at about 9 p.m. on the 28th April and though S.I. Gartia had been sent away to Amarda Railway Station at that time he took no steps to get the entry made in the station-diary. His explanation is that as the station-diary was not maintained by him it was not his duty to alter the fact of escape of Maheswar in the station-diary. This explanation is not convincing. He has gone out of his way to take upon himself the role of an officer-in-charge of a "police station by writing out the F.I.R. (Ext. 2) and as a senior police officer he knew very well that the necessary entry in the station diary should be made as soon as the F.I.R. is drawn up. S.I. K.M. Das admitted that it was the duty of the officer-in-charge to mention in the station-diary the fact of arrest of Maheswar and when Inspector Chakravarty assumed the powers of the officer-in-charge u/s 551 Code of Criminal Procedure, it was his duty either to make the necessary entry in the station-diary or to see that such an entry was made by the A.S.I. under his instructions. If really the F.I.R. (Ext. 2) had been drawn up in the usual course at 9 p.m. on the 28th April I am certain that a corresponding entry would have been made in the station-diary of that date and the absence of any such entry must necessarily lead to the inference that the F.I.R. was not drawn up on that date.

20. In this connection the evidence of S.P. Sri S.K. Ghose is interesting. When he was examined-in-chief before this Court on 5-10-53 he stated that he saw Ext.2 for the first time at about 4 p.m. at Rasgovindpur on the 29th April. This answer, given perhaps in an unguarded moment, practically destroyed the entire prosecution case because according to the evidence of Inspector Chakravarty and S.I. K.M. Das the plain paper F.I.R. (Ext. 2) was sent to Morada, police station where a regular F.I.R. in the printed form was drawn up on its basis at about 11 a. m. on 29-4-51. Thus if the plain paper F.I.R. had reached Morada. Police station at about 11 a.m. On 29-4-51 it could not have been available for inspection by the S.P. at Rasgovindpur at 4 p.m. on that date. On the other hand the admission by S.P. Sri Ghose that he saw the plain paper F.I.R. (Ex. 2) at Rasgovindpur at 4 p.m. on the 29th would corroborate the defence case that after he had dictated the draft F. I. R. (Ext. H) to Inspector Banerjee at about that time Inspector Chakravarty copied it out in Ex. 2. Sri Ghose seems to have realised how damaging this answer would be to the entire case and subsequently during his examination by the Court on the next day (6-10-53) he stated that he saw only a carbon copy of Ext. 2 and not original of Ext. 2 at 4 p.m. on the 29th and that he made a mistake in deposing on the previous day about his having seen Ext.2. This attempt to explain away the damaging admission has also failed because he himself admitted that on a careful scrutiny of the reverse side of Ext. 2 it did not appear as if a carbon copy had been made of that document. There is no impression on the reverse side of the document to show that a carbon paper had been placed below when it was being written. Thus if no carbon copy of Ext. 2 808 admitted by the S.P. himself was prepared his ingenious explanation that he saw only a carbon copy of Ext. 2 on the 29th at 4 p. m. cannot stand.

21. Relying, therefore, on the evidence of Inspector Banerjee, the omission of any entry in the station diary and the aforesaid admission made by Sri Ghose I

would, in agreement with the lower Court, hold that the plain paper F.I.R. (Ext. 2) was written sometime between 4 and 5 p.m. on the 29th April by Inspector Chakravarty after seeing a draft of the F.I.R. Ext. H dictated to Inspector Banerjee by the S.P. himself. Thus it is well established that not only the contents of the F.I.R. are untrue but the F.I.R. itself was ante-dated.

22. A question would naturally arise as to why such a responsible officer as the Superintendent of Police should take upon himself the discreditable part of concocting an untrue F.I.R. and ante-dating it. Some attempt was made by the defence to show that S.P. became annoyed with S.I. Gartia and wanted to put him into trouble and also wanted to favour S.I. K.M. Das. Some support for this suggestion is found in the contents of the F.I.R. (Ext. 2) itself. There it is stated that Maheswar after his arrest was handed over to S.I. Gartia to be kept in safe custody and that a special warning was administered to S.I. Gartia to keep a watch over him and to prevent his escape. It is thus clear that the informant (Inspector Chakravarty) while drawing up the F.I.R. had already made up his mind to throw the entire blame for the escape of Maheswar on S.I. Gartia. In fact, a careful perusal of the F.I.R. (Ext. 2) would show that though ostensibly it was the F.I.R. of a case u/s 224 I.P.C. against Maheswar, in essence, it was merely a charge-sheet against S.I. Gartia and the two constables Chintamani Rath and Sansar Maharana (D.Ws. 7 and 8) for negligence in guarding Maheswar. The S.P. himself admitted that the so-called arrest and escape of Maheswar from custody as spoken to by Inspector Chakravarty was very technical. Inspector Chakravarty also stated that Maheswar was verbally arrested and not handcuffed. For such a technical arrest and escape one would not ordinarily expect the police to start a subsidiary case u/s 224 I.P.C., especially when the serious case of dacoity was then under investigation. In ordinary course, none would buther to start a subsidiary case; and the entire energies of the police would be directed to the re-arrest of Maheswar and further investigation of the dacoity case. Hence, when the S.P. dictated the draft of the F.I.R. (Ext. H) to Inspector Banerjee on the 9th afternoon it is reasonable to infer that the primary purpose of starting the case u/s 224 I.P.C. was to take departmental action against S.I. Gartia. It is also probable that the S.P. thought that by starting a case u/s 224 I.P.C. against Maheswar the later may get frightened and may help the police in the detection of the dacoity case by confessing his guilt and naming his accomplices. I have already shown that from the judicial confession of Maheswar it is clear that on the 28th evening the police were not able to obtain any clue from him in connection with the dacoity case though he was given some beating at the out-post. If the police suspected that he had something to do with the commission of dacoity one of the methods of coercing him to speak all that he knew about that case would be to start a case u/s 224 I.P.C. on the admitted fact that he was brought to the out-post on the 28th, kept in charge of two constables on the verandah of the out-post and that he ran away without obtaining the permission of the police. In other word, the case u/s 224 I.P.C. was perhaps started with the primary object of facilitating the investigation in the

parent dacoity case by compelling Maheswar to tell the police all that he knew. Whatever might have been the motive of S.P. Sri Ghose in dictating the draft of the F.I.R. to Inspector Banerjee on the 29th evening I have no doubt that the F.I.R. was drawn up at his instance and ante-dated.

23. Any police officer would at once have realised that unless the station-diary entry of the 28th was altered the ante-dating of the F.I.R. would be immediately exposed. Doubtless, the S.P. could not have known on the 29th that Inspector Banerjee would expose him in Court. But he was anxious to see that all the police papers were properly prepared so as to conform to the entries in the F.I.R. Hence, strenuous attempts were made to persuade S.I. Gartia and the A.S.I. Sahu to alter the entries in the station-diary of the 28th. Such alteration would not be very difficult if these two police officers would Agree inasmuch as the station-diary book which was they current at the out-post had been opened only on 23-4-51, i.e., six days before. All the entries from the 23rd till the 28th April had been written either by S.I. Gartia or by A.S.I. D.K. Sahu. Hence, if there two police officers would agree there would be no difficulty in completely destroying the station-diary book, substituting an entirely new book and re-writing all the entries up to 28th correctly and in the entry of the 28th adding a note about the substance of the F.I.R. in the 224 I.P.C. case. S.P. Sri Ghose admitted that such an alteration was possible only with the help of the staff of his office and with the connivance of the Circle Inspector In this case, as already shown, the S.P. and the Circle Inspector took a prominent part in ante-dating the F.I.R. and consequently it would not be difficult to change the station-diary entry so as to avoid any suspicion. The only difficulty was the obtaining of the consent of S.I. Gartia and A.S.I. Sahu.

24. It is in this connection that the evidence of Dy. S.P. Sri Sanatan Panda. (D.W. 9) becomes very important. He has spoken about the telephonic conversation between him and the S.P. on the 29th night, how the S.P. told him that he has dictated the F.I.R. in the escape Case and suggested that the station-diary should be changed. He has also spoken about the subsequent talk between the S.P. and S.I. Gartia in his presence at the office of the S.P. on the 1st May at about 4 p.m. and how S.I. Gartia was not agreeable to change the station-diary entry of the 28th unless carbon copies of the same which had already been despatched to the superior police officers were returned to him. S.I. Gartia justified in insisting on this safe guard before accepting the suggestion of the S.P. because otherwise there was a danger that the carbon copies of the original entry of the 28th may be used to put him into trouble for having changed the station-diary entry. The evidence of Dy. S.P. Sri Panda, was severely criticised and it was urged that he was perjuring against S.P. Sri Ghose in view of some difference between them. Doubtless, there is evidence to show that subsequently the two officers fell out and made allegations against each other before the D.I.G. of Police in consequence of which Sri Panda was transferred. But there is no evidence to show that prior to the 29th April, 1951 these two officers had fallen out. Hence, the probability that finding that Sri Panda would not support

him Sri Ghose subsequently wrote against him to the D.I.G. of Police and got him transferred elsewhere cannot be overlooked. Whatever that may be, it is true that in the circumstances of this case the evidence of Sri Panda. (D.W. 9) or that of S.I. Gartia (D.W. 12) or that of A.S.I. Sri Sahu (D.W. 10) could not be accepted without adequate corroboration but in view of the evidence of Inspector Banerjee and the other circumstances fully discussed above which leave no room for doubt that the F.I.R. was drawn up at the instance of S.P. Sri Ghose on the 29th afternoon. His further efforts to persuade S.I. Gartia to change the Station-diary entry of the 28th April, as deposed to by Dy. S.P. Sri Panda seem probable.

25. Too much importance should not be attached to the fact that in the formal F.I.R. drawn up at Morada police station it was shown that it was written at 11 a. m. on the 29th April if the officer-in-charge connives it is always easy to alter by a few hours either the entries in the station-diary or the F.I.R. itself. S.P. Sri Ghose admitted that on the 29th April, 1951 after returning to Baripada he sent the police pick-up to Rasgovindpur out-post for facilitating the investigation of the dacoity case and the escape case at the request of Inspector Chakravarty, It would not, therefore, be difficult for Inspector Chakravarty to rush to Morada police station in that pick-up and get the necessary entry made to show, that the F.I.R. had been drawn up in fact at 11 a.m. on that date. S.I. K.M. Das admitted that the police party went to Morada at 11 p.m. on 29-4-51 in the pick-up. When officers of the rank of a Superintendent of Police and an Inspector of police are keen on ante-dating an F.I.R. it would not be difficult to get these things done unless the officer-in-charge of the police station like S.I. Gartia would not agree to do his part. There is no intrinsic evidence in the formal F.I.R. to show that it was drawn up at 11 a.m. on the 29th April. The F.I.R. was put up before the Sub-Divisional officer at Baripada only on 2-5-51.

26. The carbon copy of the station diary entry of the 28th April of Rasgovindpur outpost is Ext. 30. On that Inspector Chakravarty wrote an order dated 29-4-51 calling upon A.S.I. Sri Sahu to explain why the arrest And escape of Maheswar were not noted in the station-diary. The A.S.I. gave some explanation but a portion of the paper containing his explanation is torn. This A.S.I. was cross-examined on 11-12-51 with reference to the explanation given by him. An affidavit was filed before this Court by the Prosecuting Inspector (who conducted the case before the lower Court) to be effect that when the A.S.I. was cross-examined on 11-12-51 Ext. 30 remained unmutilated and that the explanation given by the A. S.I. to the Inspector was that he omitted to make any note about the escape of Maheswar in the station-diary at the instance, of S.I. Gartia. The suggestion of the prosecution is that somebody, on behalf of the defence tore away this portion of Ext. 30 so as to, destroy a piece of evidence which would go against S.I. Gartia.

For the purpose of his case it is unnecessary for us to consider who was responsible for tearing away a portion of Ext. 30. Moreover, I am not prepared at this belated stage to rely on the uncorroborated affidavit of the Prosecuting

Inspector regarding the contents of the explanation given by A.S.I. Sahu to Inspector Chakravarty on the 30th May, 1951. If the prosecution relied on it ought to have further cross-examined A.S.I. Sahu on 11-12-51 and specifically asked him as to whether he admitted before the Inspector that he deliberately omitted to make the necessary entry in the station-diary of the 28th at the instance of S.I. Gartia. No such question was, however, put and the cross-examination regarding Ext. 30 was very meagre. Moreover, from two other documents (Exts. 27 and 28) proved by the prosecution appears that on 29-4-51 this A.S.I. was called upon by S.I. K.M. Das to explain the contents of the station-diary and on 4-5-51 he gave an explanation which supports the defence case. If this explanation in Ext. 28 was contradictory to his explanation given in Ext. 30 to Inspector Chakravarty it was the duty of the prosecution while cross-examining A.S.I. Sri Sahu to draw his specific attention to the contradiction and give him an opportunity of explaining the same. This was, however, not done and I would not, therefore, attach much importance to the affidavit of the Prosecuting Inspector.

27. During the course of the argument the conduct of the trying Magistrate Sri P.R. Chandra, was adversely commented upon and it was urged that from the outset he took up an attitude unfavorable to the prosecution. In support of this argument reliance was placed on the nature of the questions put by him to Inspector Chakravarty (P.W. 1) on 20-6-51 as soon as he was examined-in-chief and before he was cross-examined. Doubtless, the Court questions put at such an early stage to the first witness examined by the prosecution would lend some support to the view that the learned Magistrate showed unusual zeal. He might have waited for the cross-examination of the witness to be completed before putting Court questions. But there is no indication on record to show that he was biased against the prosecution from the beginning as alleged now. If the prosecution had any such reprehension it would have surely moved for the transfer of the case from his file. On the otherhand, as already pointed out, S.P. Sri Ghose seems to have had so much confidence in the Magistrate that he took the risk of writing a confidential D.O. to him on the 30th September, 1951 in which he made serious reflection on the conduct of the defence lawyer. The learned Magistrate in his explanation to this Court has stated that as S.P. Sri S.K. Ghose was his "intimate friend" he did not proceed against him for contempt of Court for having written that D.O. It also appears that after delivering judgment in the case on 4-2-52 the learned Magistrate made a note in the order-sheet to the effect that on 26-1-52 the S.P. requested him to declare the case as "True, no evidence" in case of an acquittal so that Inspector Chakravarty would be saved. This note of the Magistrate was also adversely commented upon and it was urged that he took up an attitude hostile to the S.P. throughout the case. I am, however, unable to accept this argument. The Magistrate's statement that S.P. Sri Ghose was his intimate friend has not been denied by the S.P. while giving evidence before us. The Magistrate took no action, against Sri Ghose for contempt of Court and this clearly shows that he was not going out of his way to

put the S.P. into trouble as urged by Mr. Mohanty, on behalf of Sri Ghose.

28. The next question is whether there is any justification for expunging the remarks made by the learned Magistrate against S.P. Sri S.K. Ghose, S.I. Sri K.M. Das and Inspector Sri J.C. Chakravarty. The power of this Court to expunge objectionable and uncalled for remarks made by trying Magistrates u/s 561A Code of Criminal Procedure is well-recognised and was rightly not challenged. I need refer only to (Hakim) Syed Mohammad Vs. Emperor, and Muhammad Fazal Shah v. Muhammad Asghar and Anr. AIR 1950 Lab. 66. In a very recent decision of a Full Bench of the Bombay High Court reported in State of Bombay v. Nilkanth 55 Bom. L.R. 838 (F.B.) the law on the subject has been summarised thus:

Coming to the question of the exercise of the jurisdiction, I think it is necessary for us to point out that although we have the jurisdiction u/s 561A judicially to correct the judgment of the lower Court, this is every exceptional jurisdiction which should be exercised in the most exceptional cases. It is very necessary in order to maintain the independence of the judiciary, that every Magistrate, however union, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined. A jurisdiction like this is intended to be exercised when remarks are made without any foundation whatsoever, when remarks are made against strangers which remarks may do irreparable harm to them and who have not even been heard in their defence by the Court which passes the remarks. This jurisdiction is not intended to substitute the opinion of the High Court for the opinion of the lower Court. A Judge, as we said before however humble and however union, is entitled to his own opinion with regard to matters that come before the Court. Judicial corrections should be restricted to cases where the decision is wrong or erroneous, but if the decision is right or if no decision is arrived at, then this Court should interfere u/s 561A in he must exceptional and the arrest of cases.

With respect, I would entirely agree with these observations.

29. Bearing in mind the aforesaid principles I do not think that the Magistrate's strictures were unjustified. The Magistrate's adverse comments were mainly directed against the conduct of the three police officers, namely, S.P. Sri S.K. Ghose, Inspector Sri J.C. Chakravarty and S.I. Sri K.M Das in starting a case u/s 224 I.P.C. against Maheswar.

30. In view of my agreeing with the lower Court's finding that the F.I.R. (Ext. 2) contains an untrue statement of fact, that it was drawn up in the afternoon of the 29th April, 1951 at the instance of the S.P. and ante-dated, there can be no question of expunging the remarks of the learned Magistrate. A suspect in a dacoity case was brought to the out-post, interrogated and assaulted but he

gave no clue and ran away from the out-post. This simple incident was subsequently seized upon for the purpose of foisting a case u/s 224 I.P.C. against him. Having thus ante-dated the F.I.R. the S.P. tried all sorts of coercive methods with a view to persuade S.I. Gartia to change the entry in the station-diary of the 28th April so as to make it conform to the F.I.R. He threatened him with an oral order of suspension on the 29th evening and sought the help of the Dy. S.P. Sri Sanatan Panda for the purpose of influencing the S.I. to accede to his suggestion. Subsequently, however, when the S.I. showed reluctance he was relieved of his charge of the out-post and placed under suspension. During the trial of the case also the S.P. wrote an objectionable D.O. to the trying Magistrate and prior to the delivery of the judgment suggested to him that even if the case ended in acquittal it may be entered as "True" so as to save Inspector Chakravarty. Such a conduct on the part of the S.P. is certainly objectionable and the strong language used by he learned Magistrate against him, Inspector Chakravarty and S.I. K.M. Das seems justified As more than two and a half years have elapsed since the date of the occurrence it seems inadvisable now to start a case u/s 211 I.P.C. against these police officer. But I would endorse the learned Magistrate's observations regarding the desirability of the Govt. taking suitable departmental action against them.

31. It may be that the language used by the Magistrate in some places is not happy and is perhaps too strong. For instance, he has observed in his judgment:

This S.I. (K.M. Das P.W. 2) seems to be a veteran liar and has been trying to shield a lie with another lie:

This observation was made with reference to the evidence of this S.I. regarding the subsequent arrest of Maheswar by Choukidar Chandra Behera (P.W. 8). This Choukidar stated that he arrested Maheswar and produced him first at Basta police station from where he was taken to Rasgovindpur out-post. But, from the station-diary entry (Ext. A) of Basta police station dated 14-5-51 it appears that One A.S.I. L.D. Rai surrounded the house of Maheswar Dehuri and arrested him. The trying Magistrate was doubtless entitled to prefer the station-diary and disbelieve the evidence of Chandra Behera (P.W. 8) and S.I. K.M. Das on this point. But as A.S.I. L.D. Rai of Basta police station was not examined as a witness in this case to prove the circumstances under which he Arrested Maheswar the Magistrate need not have gone to the length of saying that the evidence of S.I. K.M. Das On this point is a lie. Apparently, in view of his indignation against the police officers for starting a false case u/s 224 I.P.C. he could not restrain himself in his language; but when his findings on the essential facts of the case appears to be fully justified it will not be proper for this Court in exercise of its powers u/s 561A Code of Criminal Procedure to modify the strong language used in his judgment at some places.

32. I would, therefore, dismiss the Government Appeal and the Revision petitions.

Mohanty, J.

33. I agree.