CRIMINAL REVISION.

Before Greaves and C. C. Ghose JJ.

1926

Feb. 1.

SATYA CHARAN MITRA

v.

EMPEROR.*

Police Officer—Statutory and inherent powers of the Calcutta Police officers to investigate and record statements outside the Presidency town—Examination of a witness at Howrah—Admissibility of statement—Calcutta Police Act (Beng. IV of 1866), s. 78A—Police Act (III of 1888)—Criminal Procedure Code (Act V of 1898), s. 162.

Under s. 78A (*1*) and (*2*) of the Calcutta Police Act (IV of 1866), the attendance of a witness who is within the limits of the town or suburbs of Calcutta, or 30 miles of such limits, and his oral examination are intended to take place within the Presidency town itself. Sub-section (*3*) only comes into force if, for some reason, it is difficult or inadvisable to require his attendance within the precincts of such town.

Where a Calcutta Police officer investigating a cognizable offence proceeded to Howrah, and took a statement from a person, subsequently prosecuted for the offence in Calcutta, when no requisition had been made under s. 78A (*3*) to the Superintendent of Police of Howrah :—

Held, that he had no power under the Police Act to take the statement, and that it was inadmissible.

All investigations by the police must be controlled, in the mofussil, by the Criminal Procedure Code, and in Calcutta by the Calcutta Police Act or by a Circular. Apart from the provisions of an Act or Circular, the Calcutta Police have no inherent powers of investigation and recording statements of witnesses.

Queen-Empress v. *Nilmadhub Mitter* (*1*) distinguished.

S. 162 of the Code does not apply to an investigation by the Calcutta Police ordered by the Chief Presidency Magistrate under s. 156 (*3*), and carried on by them under the Calcutta Police Act.

Semble : If a Calcutta Police officer is in fact acting under s. 78A (*3*) in recording the statement of a person in Howrah, he would, by virtue of

* Criminal Revision No. 98 of 1926, against the order of T. J. Y. Roxburgh, Chief Presidency Magistrate of Calcutta, dated Jan. 21, 1926.

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the Police Act, III of 1888 be acting under the direction of the Superintendent of Police in Howrah, and s. 162 would apply.

One Satya Saran Mitra, the brother of the petitioner and uncle of Sashi Bhusan Mitra, died in August 1925, leaving, among other properties, war bonds of the value of Rs. 38,800. Sashi Bhusan drew the interest on them, cashed 24 pieces, sold some other pieces to Doyal Hari Banerjee, and kept the rest with him for safe custody. On the 10th November Girija Bhusan Sarkar filed an application before the Chief Presidency Magistrate against the petitioner, his son, Sashi Bhusan, and Doyal Hari, alleging that Satya Saran was the holder of certain war bonds, that after his death difficulty had arisen regarding them, and praying for a stop order and a direction to the Criminal Investigation Department for enquiry into the matter of dealing with the bonds by the accused. The Magistrate examined the applicant, and sent the application to the Deputy Commissioner, Criminal Investigation Department, for enquiry and report. On the 24th November the Magistrate made the following order: "*Report seen. Deputy Commissioner, Criminal Investigation Department, to take cognizance.*" On the 26th G. S. Roy, of the Criminal Investigation Department, went to Howrah where the accused were residing, held an investigation and recorded the statement of Sashi Bhusan Mitra (Ex. 34) to the effect that the petitioner, after the death of Satya Saran, made over certain war bonds to him (Sashi Bhusan), that he drew the interest on these bonds, cashed 24 pieces, sold some bonds to the value of Rs. 9,000 odd to Doyal Hari, and kept the rest in his custody, and that he paid the proceeds to the petitioner. Sashi Bhusan was thereupon arrested. On the 2nd December, the same police officer examined

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the petitioner at Howrah and recorded his statement (Ex. 35). In this statement the petitioner said that Satya Saran, his youngest brother, died in August last, that Sashi Bhusan gave him (the petitioner) a bundle of papers explaining that Satya Saran had sent them, that the same evening the latter confirmed this, that later he, the petitioner, made over the bundle to Sashi Bhusan, that he knew nothing about the encashment and sale by the latter, and that he had received no money from Sashi Bhusan in connection with the bonds.

The three accused were put up before the Chief Presidency Magistrate who proceeded to hold a preliminary enquiry. Objection was taken to the admissibility of Ex. 35, but the Magistrate overruled it and admitted the document, subject to objection at the trial. On the 21st January 1926 he committed the accused to the High Court sessions on charges under ss. 411, 414, 420, 467, 471 and 474 of the Penal Code. The only evidence against the petitioner was Ex. 35. He then moved the High Court and obtained the present Rule.

Mr. B. C. Chatterjee (with him *Babu Mrityunjoy Chatterjee* and *Babu Biraj Mohan Roy*), for the petitioner. A complaint was filed by Girija Bhusan Sarkar on the 10th November. The Chief Presidency Magistrate took cognizance under s. 190, and ordered an enquiry under s. 202, which was conducted under Chapter XIV of the Code; s. 162 applies and makes the statement of the petitioner inadmissible. The investigating police officer had no power to record the statement in Howrah. There was no requisition made under s. 78A (*3*) of the Calcutta Police Act to the Superintendent of Police, Howrah. The statement is inadmissible on this ground also.

The Advocate-General (Mr. B. L. Mitter) with him *Mr. S. K. Sen*, *Mr. Khundkar* and *Mr. Narendra Kumar Bose*, *Advocate*, for the Crown. S. 162 of the Code does not apply. The investigation was held by the Calcutta Police, but not under Chapter XIV of the Code. They have powers to investigate and record statements within and without the Presidency town. Their powers are not limited only by the conditions laid down in s. 78A of the Calcutta Police Act. They have power under Circulars of the Commissioner of Police. They have also inherent power to record statements in the course of the investigation, apart from the Calcutta Police Act and Act III of 1888. Refers to *Queen-Empress* v. *Nilmadhub Mitter* (1).

GREAVES J. This Rule was granted by my learned brother Mr. Justice C. C. Ghose sitting with Mr. Justice Mukerji, and the object of the rule was to secure the quashing of an order of commitment passed by the Chief Presidency Magistrate of Calcutta. The statement contained in the petition upon which the rule is based is that on the 10th November one Girija Bhusan Sarkar, on behalf of his mother-in-law, preferred a complaint before the Chief Presidency Magistrate, Calcutta, charging the petitioner and the petitioner's son and another person with forgery, cheating, theft, etc., and it is said that the Chief Presidency Magistrate thereupon took cognizance of the complaint under s. 190 of the Criminal Procedure Code, examined the complainant under s. 200 and directed an enquiry under s. 202, and that under these circumstances a certain statement, which was taken from the petitioner by an investigating police officer, is not admissible in

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evidence under the provisions of s. 162 of the Code of Criminal Procedure. I do not think, however, that this contention is well founded. If one turns to the original application which was made to the Chief Presidency Magistrate, one finds that it is made in general terms. It stated that a certain Satya Saran Mitra died, and that he was the holder of certain Government securities, and that some difficulties having arisen after his death with regard to these securities, it was necessary that certain enquiries should be made; and the actual application that was made to the Chief Presidency Magistrate was for a stop order in respect of the securities referred to in the petition, and for a direction on the Criminal Investigation Department Police to make enquiry into the matter. The order passed on that application by the Chief Presidency Magistrate was to send the matter to the Criminal Investigation Department for enquiry and report, and with regard to the stop order the Magistrate stated that the evidence was not sufficient to justify the order at that stage. I think, therefore, that the arguments based on the contention to which I have referred are not well founded, and that the Chief Presidency Magistrate was merely acting under the provisions of s. 156 (*3*) of the Code of Criminal Procedure which empowers the Magistrate to order an investigation in the terms stated in the section. But the real point that we have got to decide is based on a consideration of the powers of the Calcutta Police under the Calcutta Police Act. The facts being as I have stated, they clearly show that s. 162 of the Criminal Procedure Code does not directly apply, for the investigation that was directed was carried on by the Calcutta Police under the provisions of the Calcutta Police Act, and it appears that what happened was that after the Chief Presidency

Magistrate made his order, the petitioner's son having been already arrested, the police officer went to the petitioner and took from him a statement which is now sought to be used in evidence against the petitioner, and on the strength of which he was committed by the Magistrate for trial at the sessions, it being admitted that apart from this statement obtained from the petitioner the evidence on the record is not sufficient to justify the committal, and indeed the Magistrate very frankly so states. Turning to the provisions of s. 78A of the Calcutta Police Act which is the Act applicable, as the Code of Criminal Procedure does not apply to the Calcutta Police except as expressly indicated in that Act, one finds that according to the provisions of s. 78A(*1*) the Commissioner of Police, if in the course of any investigation he thinks a cognizable offence has been committed, can by an order in writing require the attendance before himself or any officer serving under him, not below the rank of an Inspector, who is investigating a cognizable offence, of a person within the limits of Calcutta or within a radius of 30 miles. Sub-section (*2*) provides that the Commissioner of Police can examine orally the person who attends in accordance with the order passed under section 78A(*1*), and that the person so attending is bound to answer all questions. Then comes sub-section (*3*). That provides that the Commissioner of Police may forward to the Superintendent of Police of the district in which any person, from whom any information is required relating to the facts or circumstances of the case under investigation, is believed to be, such questions and such statements as may be necessary for the purpose of obtaining the information desired; that is to say, the scheme of s. 78A, in my reading of the section, is to enable the Commissioner

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of Police to procure the attendance before him, or any officer deputed in that behalf, of any person for the purpose of obtaining information from such person; and, as I have already stated, sub-section (2) authorises the oral examination of the person whose attendance is procured. Then under sub-section (3) the Commissioner of Police is empowered to obtain the assistance of the Superintendent of Police in a district outside Calcutta for the purpose of having questions put to a person from whom information is desired but who for some reasons cannot attend. As I understand s. 78A(1) and (2), the attendance and questionings are intended to take place within the Presidency town itself, and sub-section (3) only comes into force if, for some reason, it is difficult or inadvisable to require the attendance of the person from whom information is desired within the precincts of the Presidency town itself. Now what the investigating officer apparently did in this case was to go to Howrah, and take from the petitioner a statement which contains the evidence upon which the committal order has been made by the Magistrate. I do not think, therefore, that he was acting under the provisions of either s. 78A(1) or (2), nor do I think that he was in fact acting under the provisions of s. 78A(3), for I do not understand that any requisition was made to the Superintendent of Police of Howrah for the purpose of procuring the information which was desired, and if in fact the investigating officer had been acting under the provisions of sub-section (3) he would, by virtue of clause (3) of the Police Act III of 1888, be acting under the direction of the Superintendent of Police of Howrah, and the matter would accordingly be governed by the provisions of s. 162 of the Code of Criminal Procedure, for that Act, of course, applies to Howrah. I think, therefore, we are

met with this difficulty that if what the police officer says he did, falls within s. 78A(*3*), then s. 162 of the Criminal Procedure Code applies for the reasons I have indicated. But in my opinion the investigating officer was not acting under s. 78A at all, and the question, therefore, we have got to see is whether he was justified in the course which he took, and whether the statement which he took from the petitioner is, under these circumstances, admissible in evidence.

It is suggested by the Advocate-General that the Calcutta Police Act does not contain all the powers vested in the Calcutta Police, and that there are in existence certain Circular Orders which give or may give wider powers in this matter than are contained in s. 78A, but no such order has been produced before us, and I do not think we are justified in assuming that such an order exists. Then a further contention is urged before us. It is said that the power to investigate contains an inherent power to take a statement such as this, and that, accordingly, under the general law, this particular statement is admissible in evidence against the accused, and we are referred, in support of this argument, to the case of *Queen-Empress* v. *Nilmadhub Mitter*, (1), which is a decision of the Full Bench of this Court, as an authority for the proposition that there are certain powers inherent in the police which are not expressly set out in the four corners of the Calcutta Police Act; for instance it is said that there is no provision in the Calcutta Police Act providing for the taking of confessions, and yet, according to the decision of the Full Bench, the confession that was taken in that case was admitted in evidence, although, as I have stated, there was no power to take confession expressly included within the provisions of the Calcutta

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Police Act. But in that case the confession was taken within the town of Calcutta itself, and consequently that case cannot be prayed in aid to support the procedure adopted here. And we are not prepared to assent to the proposition that in criminal matters there is this inherent power such as the Advocate-General contends exists. All investigations by the Police, it seems to me, must be controlled in the mofussil by the Code of Criminal Procedure, and in Calcutta by the Police Act itself or by any Circular Orders issued. I am not prepared to say that in a matter of this nature we can safely import a power, such as the Advocate-General seeks to import, of taking statements generally by the Police, apart from the provisions of any Act, and then put the statements so taken in evidence against the persons by whom they were made. I think that would be to strike at the principles to preserve which the provisions of section 162 of the Criminal Procedure Code were enacted, and would introduce a very dangerous principle.

For the reasons, therefore, we have indicated, I think the Rule should be made absolute, and the commitment order of the petitioner should be quashed.

C. C. GHOSE J. I agree.

E. H. M. *Rule absolute.*