

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

QUEEN-EMPRESS

1895.
October 2.

v.

VENKATARATNAM PANTULU.*

Criminal Procedure Code—Act X of 1882, ss. 161, 172.

At the beginning of a trial in the Court of a Presidency Magistrate, an application was made, on behalf of the accused, for a copy of the Police charge sheet which contained the whole of the prosecution evidence as set forth by the Police, and extracts from, if not copies, of the Police diary. The application was rejected by the Magistrate :

Held, that the High Court should not on revision interfere with the order of the Magistrate.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise the order of O. R. Jones, Chief Presidency Magistrate, Madras, dated 30th September 1895, in calendar case No. 25834 of 1895.

The facts of the case and the reasons for the order sought to be revised was stated by the Chief Presidency Magistrate as follows :—

“ On calendar No. 25834 of 1895, wherein Venkataratnam Pantulu is charged by the Police with theft in a building, being called on for hearing, Mr. L. Gordon applied, on behalf of the accused, for a copy of the Police charge sheet. This was refused for the following reasons :—

I do not know of any provisions of law in the Criminal Procedure Code or elsewhere which entitles the defence to call for a copy of the charge sheet. I am willing to give a copy of the charge preferred by the Police, though the defence is not legally entitled to that until the charge has been framed by the Court under section 210 or 255, Criminal Procedure Code.

Police charge sheets put in by the Madras City Police contain a good deal of information for the use of the Magistrate, and are certainly extracts from if not copies of the Police diary which,

* Criminal Revision Case No. 510 of 1895.

under section 172, Criminal Procedure Code, the defence is not allowed to call for or to see.

To allow the defence to see the whole of the prosecution evidence before the enquiry or trial would simply amount to placing the whole case for the prosecution at their disposal. The witnesses would be liable to bribery and intimidation, and with ignorant witnesses who might be induced to omit or include one single statement while otherwise telling all the truth, this would very often cause a true case to break down.

I am unable to see how a prior knowledge of what the prosecution witnesses are going to say can benefit the accused, unless he makes an unfair and illegal use of that knowledge. As the evidence of each witness is given and recorded, the accused is given ample opportunity to cross-examine, or if he desires it, he may reserve his cross-examination until the prosecution is closed. Again, when called upon for his defence, he can re-call and cross-examine any witnesses he likes.

For these reasons I consider that to give the accused a copy of the charge sheet before the trial would give him a most unfair advantage, if inclined to use the knowledge thus gained improperly, and would be of no benefit to him if not so inclined and therefore, in the absence of any provision of the Criminal Procedure Code entitling him to it, I refuse to grant the copy applied for."

The accused preferred the petition.

The grounds on which the above order was sought to be revised were stated in the petition as follows:—

"(1) Because the Police cannot extend the privilege given by section 172, Criminal Procedure Code, to documents other than diaries by incorporating the contents of a diary into such documents.

"(2) Because an accused person is entitled to inspection of the charge sheet in Court, and if a copy is not granted beforehand, delay may be occasioned by necessary adjournments.

"(3) Because the ruling of the Magistrate is contrary to the principle laid down in *Sheru Sha v. The Queen-Empress*(1) and *Bikao Khan v. The Queen-Empress*(2)."

Mr. H. G. Wedderburn for petitioner.

The Crown was not represented.

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EMPRESS
v.
VENKATA-
RATNAM
PANTULU.

(1) I.L.R., 20 Calc., 642.

(2) I.L.R., 16 Calc., 610.

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JUDGMENT.—We are not prepared to hold that the Chief Presidency Magistrate was wrong in refusing a copy of the charge sheet to the prisoner's attorney at the present stage of the proceedings.

The petition is dismissed.

¹ Gordon attorney for petitioner.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

EACHARAN PATER AND ANOTHER, APPELLANTS,

v.

APPU PATER AND OTHERS, RESPONDENTS.*

Court Fees Act—Act VII of 1870, ss. 6, 7 (ix), 17—Redemption suit against mortgagee in possession—Arrears of rent covenanted for, to be deducted from the mortgage amount.

In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the mortgage amount :

Held, that the Court fee should be computed according to the principal sum expressed to be secured by the mortgage.

CASE stated for the opinion of the High Court under Civil Procedure Code, section 617, by R. S. Benson, District Judge of South Malabar, in appeal suit No. 512 of 1894.

The case was stated by the District Judge as follows :—

“ Under section 617, Civil Procedure Code, and following the precedent of the reference in *Venkappa v. Narasimha*(1) and *Rama Varma Rajah v. Kadar* (2), I have the honour to refer the following question as to Court fees for orders of the High Court :—

“ In a suit for redemption of land demised on kanom, the plaintiff also claims arrears of rent due under the demise and prays for the recovery of the land on payment of the amount of the kanom *minus* the arrears of rent. What is the Court fee payable on the plaint? Is it to be calculated on the kanom amount, or on that sum *plus* the arrears of rent claimed ?

* Referred Case No. 34 of 1894.

(1) I.L.R., 10 Mad., 187.

(2) I.L.R., 16 Mad., 415.