the case to the Divisional Bench with this expression of our opinion.

VEERAPPA GOUNDAN, *In re.*

COUTTS TROTTER, C.J.

[*Ed.* :—The decision of Sir WALTER SCHWABE, C.J., and WALLACE, J., in Reference No. 5 of 1923 (*In re Nannikudumban* (1923) 45 M.L.J., 406) must be regarded as overruled by this decision.]

B.C.S.

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## APPELLATE CRIMINAL—FULL BENCH.

*Before Mr. Justice Ramesam, Mr. Justice Waller and Mr. Justice Jackson.*

1928, April 25.

THIMMAPPA AND ELEVEN OTHERS (ACCUSED), PETITIONERS,

*v.*

THIMMAPPA (COMPLAINANT), RESPONDENT.*

*Criminal Procedure Code (V of* 1898 *as amended by Act of* 1923), *sec.* 162 (1)—"*Any such statement,*" *whether inclusive of oral statements.*

The words "any such statement" in the first paragraph of clause (1) of section 162, Criminal Procedure Code, cover not only written statements, but oral statements as well.

*King-Emperor* v. *Maung Tha Din,* (1926) I.L.R., 4 Rang., 72 (F.B.), followed and *Venkatasubbiah* v. *King-Emperor,* (1925) I.L.R., 48 Mad., 640, overruled.

PETITION under sections 438 and 439 of the Code of Criminal Procedure (V of 1898) praying the High Court to revise the conviction and sentence of the Court of Session of Anantapur Division, dated 29th September 1927 and made in Criminal Appeal No. 19 of 1927 preferred against the judgment in C.C. No. 18 of 1927,

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* Criminal Revision Case No. 821 of 1927.
Criminal Revision Petition No. 731 of 1927.

on the file of the Court of Subdivisional Magistrate of Gooty.

The case coming on for hearing, the Court (CHIEF JUSTICE and MADHAVAN NAIR, J.) made the following

ORDER OF REFERENCE TO A FULL BENCH:—

The CHIEF JUSTICE.—In this case a number of accused have been convicted of rioting and various offences arising out of the riot. They were convicted by the Subdivisional Magistrate and the conviction was affirmed by the learned Sessions Judge. The learned Sessions Judge was obviously much influenced by the decision of the Magistrate and really did little more than to examine whether there was anything to invalidate the conviction by the Magistrate. That may be a perfectly proper method of approaching a case of this nature, for the Magistrate saw the witnesses and the Judge did not, but if in such a state of things the Magistrate clearly acted on inadmissible evidence it would almost be impossible to support the decision of the learned Judge. The learned Judge's concluding statement in paragraph 5 of his judgment is one that we cannot accept. The evidence challenged as inadmissible was evidence of statements made to the police by various witnesses for the prosecution and put before the Magistrate in support of the prosecution case and in corroboration of the prosecution witnesses. The learned Judge makes the following statement: "Moreover, in spite of the fact that the Magistrate has frequently written that evidence is corroborated by early statements to the police, he has in fact only used the statements to the police for the benefit of the accused."

How the learned Judge came to say that, I cannot understand. We have been taken by Mr. Grant carefully through the judgment of the Magistrate from paragraph 8 onwards and in paragraph 8 which really contains his conclusions there are no less than seven instances in which he has referred to the impugned evidence as corroboration of the story told to him in the witness-box. I think it right to enumerate these instances and will refer to them briefly. On page 17, line 39, he is dealing with accused 1 and with the evidence of P.W. 8 that accused 1 threw a stone at him, and he says: "he (i.e., P.W. 8) mentioned about him (i.e., accused 1) even before the police." On page 18, line 17, he is dealing with the evidence of P.W. 3

as to the part taken in the affair by accused 3. He says this: "But P.W. 3 himself stated before the police in the very beginning that accused 3 had done this" (i.e., taken part in the riot, as may be seen from P.W. 15's evidence.) On page 19, line 9, he is dealing with accused 9 in this case and referring to P.W. 8 he says: "he even mentioned about him to the police shortly after this offence." In line 21 he is dealing with accused 11 and the evidence of P.W. 5 against him and says: "he (i.e., P.W. 5) mentioned about this even before the police in the very beginning." In line 36 he goes on to the case of accused 14 and accused 17 to 20 and says: "these accused were mentioned even in the police investigation" and again in line 43 "their evidence (i.e., the prosecution witnesses who had spoken to these particular accused) so far as it is corroborated by the information furnished by them to the police shortly after the offence before they had time to be tutored by the interested party leaders deserved credit." Then he speaks of the value of the testimony of P.Ws. 9, 11 and 14 and at page 20, line 12, he says this: "But their evidence so far as it has been corroborated by the information furnished by them in the very beginning may safely be accepted."

It appears to be abundantly clear that the Magistrate in many instances relied upon the oral statements made to the police as corroborative evidence and before we embark on the task of deciding whether there was enough direct evidence to warrant the convictions, we think it desirable to have the opinion of a Full Bench as to whether these statements were or were not admissible.

That question depends upon the construction to be placed upon section 162 of the Code of Criminal Procedure in its amended form. In its original form it referred in terms to a written statement made to a police officer in the course of an investigation and in terms declared it to be inadmissible. This Court held in *King-Emperor* v. *Nilakanta*(1) and *Muthukumaraswami Pillai* v. *King-Emperor*(2) that it did not forbid the admission of oral statements made to the police in the course of an investigation. Whether that was correct or not is not now worth discussing. We are really concerned with the altered language of the section of the Act of 1923. It is argued that the language there used is intended to be much

(1) (1912) I.L.R., 35 Mad., 247. (2) (1912) I.L.R., 35 Mad., 397.

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wider and expressly to exclude oral as well as written statements made to the police. A Bench of this Court in *Venkatasubbiah* v. *King-Emperor*(1) has held that the later section does not any more than did the earlier exclude the use of oral statements made to the police in corroboration of the witnesses who made them.

This is in conflict with *King-Emperor* v. *Maung Tha Din*(2) and *Emperor* v. *Vithu Balu*(3) and apparently with two cases in the Punjab High Court *Labh Singh* v. *The Crown*(4) and *Rakha* v. *The Crown*(5). In these circumstances we think that an authoritative ruling ought to be given by a Full Bench for the guidance of this Court.

I do not propose to discuss the matter at length in this referring judgment and will only briefly refer to two of my own difficulties, in accepting the authority of *Venkatasubbiah* v. *King-Emperor*(1). The first is that if the words in the present section "any such statement" are to be confined to statements reduced to writing, I can attach no meaning whatever to the words that follow "or any record thereof" which I should have thought pointed unmistakably to two things, (*a*) an oral statement, (*b*) a written record of it. I cannot readily understand what is supposed to be contemplated by a "record" (obviously Police record) of a statement which is already in the hands of the police in a written form.

In the next place, it seems to me difficult to suppose that the policy of the section can really have been to exclude written statements where at least the document is a check on what was actually said at the time and to let in the unfettered and unchecked evidence of policemen as to statements orally made to them. It is no doubt true that if the decision in 35 Madras is right, that was the result of the old section. If it was, I cannot help suspecting that the section was so drafted as to produce this result *per incuriam*. Further, I do not appreciate what can be supposed to have been the object of the altered language unless it was to prevent a repetition of the construction adopted in 35 Madras. However, at this stage I wish to do no more than to indicate my own difficulties for the consideration of a Full Bench whose business will be to decide the point for us.

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(1) (1925) I.L.R., 48 Mad., 640.
(2) (1926) I.L.R., 4 Rang., 72 (F.B.).
(3) (1924) 26 Bom. L.R., 965.
(4) (1925) I.L.R., 6 Lah., 24.
(5) (1925) I.L.R., 6 Lah., 171.

MADHAVAN NAIR, J.—As the question is obviously one of considerable importance, I agree that it may be referred to a Full Bench. Since we decided that we need not hear arguments at this stage, I refrain from discussing the question in the Order of Reference.

ON THIS REFERENCE—

*V. L. Ethiraj* (with *C. Sambasiva Rao* and *T. Appaji Rao*) for petitioners.—The words "any such statement" cover also oral statements; otherwise the following words "or any record thereof" are unintelligible. The provisos may well cover only written statements. Oral statements are more objectionable than written. The amended section is clear. See *King-Emperor* v. *Maung Tha Din*(1) and the reasons therein given.

*Public Prosecutor in charge* (*K. P. M. Menon*).—Oral statements are not intended to be excluded by the amendment; see *Venkatasubbiah* v. *King-Emperor*(2) and the reasons therein given.

## OPINION.

RAMESAM, J.

RAMESAM, J.—The question referred to the Full Bench in this case relates to the construction of section 162 of the Criminal Procedure Code, that is, whether the words "any such statement" in the first paragraph of clause (1) of the section cover only written statements or oral statements as well. The section has been the subject of consideration in a Full Bench decision of the High Court at Rangoon reported in *King-Emperor* v. *Maung Tha Din*(1). One may begin the consideration of the section by assuming that, at first sight, two different constructions are possible. The two possible constructions are stated by RUTLEDGE, C.J., at page 80. They are (1) a statement made by any person to a police officer in the course of an investigation under Chapter XIV, and (2) a statement made to a police officer in the course of an investigation under Chapter XIV and reduced into writing. The

(1) (1926) I.L.R., 4 Rang., 72 (F.B.). (2) (1925) I.L.R., 48 Mad., 640.

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difference between the two meanings consists in that the second meaning contains an additional qualification, namely "being reduced into writing." The question is, which of these is to be adopted?

The pronominal use of the word "such" is a very common expedient in legislation to avoid repetition of a long descriptive phrase or clause used earlier. We have to ascertain what are the words the repetition of which is intended to be avoided by the use of the word "such." The phrase "such statement" is intended to avoid a repetition of the statement already described. What are the words descriptive of the statement already used? The words are, "made by any person to a police officer in the course of an investigation under this chapter." These are the only words descriptive of the word "statement" earlier in the section, and presumably it is to avoid the repetition of such description that the word "such" is used in the next clause. The words "reduced into writing" are not part of the description of the word "statement" in the opening clause. If the word "such" is intended to cover also the words "reduced into writing" the earlier part of the section would have run as follows: "No statement made by any person to a police officer in the course of an investigation under this chapter and reduced into writing shall . . ." The legislature has, instead of using this form, deliberately avoided it and chosen to introduce the words "reduced into writing" into a conditional clause qualifying the verb "shall be signed" and not into a clause descriptive of the word "statement." It seems to me therefore that, looking at the grammatical form chosen by the legislature, the supposed ambiguity vanishes and the clause is capable of only one meaning, namely, the first of the two mentioned. This conclusion is strengthened by the

phrase "or any record thereof" as pointed out by RUTLEDGE, C.J., in the case already quoted and by the learned CHIEF Justice in the referring judgment. The opposite conclusion was arrived at by WALLACE and MADHAVAN NAIR, JJ., in the decision in *Venkatasubbiah* v. *King-Emperor*(1). One of the considerations which weighed with our brother WALLACE, J., in that decision was that the provisos refer only to written statements. In the first proviso, the words "such writing" make the matter clear beyond any ambiguity and the words "such statement" used further on in the proviso and in the second proviso obviously could refer only to written statements. But it does not follow that because the provisos clearly refer only to written statements, the main paragraph of clause (1) may not be wide enough to cover both oral and written statements. Another argument relied on by WALLACE, J., has reference to section 27 of the Evidence Act. He thought that, if section 162 includes also oral statements, then the information given by the accused in custody to a police officer leading to the discovery of some fact would be inadmissible under section 162. But it has always been held to be admissible under section 27 read as a proviso to section 25 of the Evidence Act. This is one of the points considered by the decision in Rangoon above referred to and it was there held that section 27 is not controlled by section 162. It is not one of the points referred to us; but we have got to deal with it as an argument relied on by WALLACE, J., in *Venkatasubbiah* v. *King-Emperor*(1). It seems to me that section 162 relates generally to the admissibility of statements and it says that statements described

(1) (1925) I.L.R., 48 Mad., 640.

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in that section are inadmissible. Section 27 relates to a more particular matter. It creates an exception to the general inadmissibility of statements made to a police officer, namely, where the statement consists of information received from the accused in custody in consequence of which a certain fact is discovered. On the principle that a general rule is affected by a special rule and not the special by the general rule, I am of opinion that section 27 is not affected by section 162 of the Criminal Procedure Code, but section 162 (Criminal Procedure Code) is affected by section 27 of the Evidence Act. The result is not that the construction of section 162 which I indicated above cannot stand but that a special exception to it exists in the circumstances mentioned in section 27 of the Indian Evidence Act. In cases not covered by the exception, section 162 as interpreted by me above continues to operate. The view indicated above is also the view taken in all the other High Courts besides Rangoon—vide *Labh Singh* v. *The Crown*(1), *Rakha* v. *The Crown*(2), *Bahadur Singh* v. *The Crown*(3), *Emperor* v. *Vithu Balu*(4), and *Azimuddy* v. *Emperor*(5).

It is unnecessary to refer to cases on the section as it stood prior to the amendment in 1923. If it is strictly permissible to consider all those cases, one would probably come to the conclusion that the legislature has redrafted the section so as to avoid the conflict that existed prior to the amendment. But it is unnecessary to pursue this line of argument any further. My opinion is that the words "shall any such statement . . . be used" in the first paragraph of the section apply to both oral and written statements.

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(1) (1925) I.L.R., 6 Lah., 24.
(2) (1925) I.L.R., 6 Lah., 171.
(3) (1926) I.L.R., 7 Lah., 264.
(4) (1924) 26 Bom. L.R., 965.
(5) (1927) I.L.R., 54 Calc., 237.

WALLER, J.—I agree and have nothing to add.

JACKSON, J.—I agree and would only add that the law as now determined leaves room for several anomalies.

Suppose a Sub-Inspector has questioned a witness early in the investigation, and on his replying that he knew nothing, has put nothing in writing. This witness subsequently appears for the prosecution; but the accused cannot prove his oral statement to the police that he knew nothing. Proviso 1 to section 162 only covers a written statement.

Suppose a witness deposes at the preliminary inquiry and then dies. His deposition is evidence under section 33 of the Indian Evidence Act. But if the accused wish to compare that evidence with what the police recorded from this witness in the course of the investigation, he cannot do so. Because the witness is not "called", as provided in section 162.

Suppose a Police Inspector wants corruptly to prove a false confession. Under section 25 of the Indian Evidence Act, he cannot. But under section 27, he can always say, the accused told me where he had hid such and such property or implement and the confession goes in. In fact as regards safeguarding an accused from police machination, section 27 renders section 25 nugatory.

Suppose an Inspector learns from a person hitherto unsuspected, that property is hidden somewhere, finds the property and arrests his informant. He cannot under section 162 prove that information. He must be careful to arrest the man first and then, under our ruling, section 27 will specially apply. So the statement of a man at liberty and free of police control is withheld from the Court, while that of a man in custody who may well have been himself led as much as he led others to the place of discovery is acceptable evidence.

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The worse goes in and the better is ruled out. The remedy lies, in my opinion, in the legislature ceasing to erect artificial barriers in the way of evidence. At one time apparently it was assumed that Courts in India could not be trusted to handle police evidence. A confession may be good evidence and a corroborative statement may have force ; how far such evidence may be believed if it rests upon police testimony is a question of fact which is left for the Courts, except in India, to decide for themselves. It seems unnecessary any longer to make an exception of India and to keep her Courts in statutory tutelage. There is no likelihood that undue deference will be paid to police evidence ; the tendency is all the other way ; nor any probability that the Courts will be flooded with confessions and corroborative statements. But occasionally the ends of justice are furthered by evidence of this sort, and whether in each particular case the evidence is credible, Indian Courts, at least in this Presidency, are quite competent to decide. I would allow a policeman to prove anything which under the ordinary law of evidence is relevant, just as he does in England, and I presume, in the Dominions.

N.R.