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IN THE MATTER OF SETH GANGA-SAGAR.

This, therefore, is our answer to the question which we have ourselves formulated.

As the applicant has succeeded entirely, we direct that he shall get his costs from the Government. We assess the fees payable to the learned Government Advocate at Rs. 200. Let a copy of this judgment, under the seal of the Court, be sent to the Commissioner of Income-tax. The Government Advocate is allowed a month's time within which to file a certificate of payment to him.

REVISIONAL CRIMINAL.

Before Mr. Justice Kendall.

1930 *December*, 8.

EMPEROR *v.* BANSIDHAR AND OTHERS.*

Criminal Procedure Code, section 162—*Right of accused to copies of statements made by prosecution witnesses before the police—Copies refused because the entries in police diary were only memoranda and not full statements—Application not mentioning that purpose is to contradict.*

It is only in the two cases mentioned in the second proviso to section 162(1) of the Criminal Procedure Code that the court can refuse to furnish the accused with copies of the statements made by the prosecution witnesses to the police. So, where the trial court refused to supply such copies on the ground that what was recorded in the police diaries were not full statements but only memoranda, it was *held* that the court acted illegally in not following the mandatory provisions of the statute and this vitiated the proceedings. The object of the law was to enable the accused to contradict a witness in court by making use of a previous statement of his, and it might be that the memoranda in the police diary were just as effective for that purpose as full statements would be. It was, therefore, not possible to say that the accused were not prejudiced.

The fact that the application for the copies mentioned that they were needed for cross-examination and did not specifically mention the purpose of contradiction did not disentitle the accused to get the copies.

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* Criminal Reference No. 676 of 1930.

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EMPEROR v. BANSIDHAR.

Mr. *Saila Nath Mukerji*, for the applicants.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

KENDALL, J. :—This is a reference made by the learned Additional Sessions Judge of Etawah recommending that a conviction by a Bench of Magistrates which has been upheld by the District Magistrate should be quashed and the sentences set aside. The facts are not of importance. The reference is made on the ground that the Bench Magistrates refused the application made by the accused under section 162 of the Code of Criminal Procedure to be supplied with copies of the statements made by the witnesses for the prosecution to the police.

The application made to the Bench for copies of these statements was rejected after the Magistrates had perused the police diaries, on the ground that what was recorded in the diaries consisted, not of the statements of the witnesses at length, but merely of a memorandum of such statements taken down by the investigating officer.

Under the first proviso to section 162(1) of the Code of Criminal Procedure, "When any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the court shall, on the request of the accused, . . . direct that the accused be furnished with a copy thereof in order that any part of such statement, if duly proved, may be used to contradict such witness". It is only in two cases that the court can refuse the copies, as the second proviso shows, namely when it is of opinion (1) that any part of any such statement is not relevant or (2) that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest. In these cases the law directs that the court shall record such opinion.

In the present case the court, that is to say the Bench of Magistrates, did not record any such opinion.

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It merely recorded that the statements were not full statements but only amounted to a memorandum. If the copies were to be denied to the accused under the second proviso to section 162 then the procedure laid down was not followed, because the court did not record such opinion.

Nevertheless it may be argued that this would be only an irregularity, and if an examination of the record showed that the real reason of the court for refusing the copies was the reason laid down by the law, then the mere fact that the court had not recorded its opinion would not vitiate the trial. This may be so, but in the present case it is clear that this was not the reason. The court has recorded the reason for refusing the copies, viz., that the statements are not full statements but only a memorandum.

It may be and has been argued before me on behalf of of the counsel for the complainant in this case that where there is only a memorandum and not a full statement the court is under no obligation to provide the accused with a copy. To this argument I cannot accede. The object of the law is to enable the accused to contradict a witness in court by making use of a previous statement of his, and it may be that the memorandum in the police diary is just as effective for that purpose as a full statement would be. The learned District Magistrate, who went into the facts of the case very carefully, has remarked that the accused demanded statements of the prosecution witnesses "for the purpose of cross-examination and not of contradicting the witnesses" and that the accused had not been in any way prejudiced through the absence of copies. The application for the copies may have mentioned that the copies were needed for cross-examination, but that would not exclude the purpose of contradicting the witnesses, and, as I have said above, a memorandum might be quite sufficient for this purpose, and it is therefore not possible to say that the accused were not prejudiced.

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In any case the law appears to me to be perfectly clear. There is a definite provision under which the court was obliged to supply the copies or direct that they should be supplied. The omission to supply the copies may have prejudiced the accused and in any case the court acted illegally in not following the mandatory provision of the statute. That is sufficient to vitiate the proceedings.

It has been contended on behalf of the complainant that if the procedure was illegal a retrial ought to be ordered. The Additional Sessions Judge has, however, considered this point and has not recommended a retrial. The case was not a particularly serious one, and the accused have already been put to a good deal of inconvenience and expense as well as having been in jail for some small portion of the period to which they were sentenced. For these reasons I accept the reference and quashing the convictions by the Bench Magistrates set the sentences aside.

Before Mr. Justice Kendall.

SHIAM LAL *v.* NAND RAM.*

1930 December, 10.

Criminal Procedure Code, section 250—Compensation for false and frivolous complaint—Complaint mentioning several offences, one of them triable by court of session —Police reporting lesser offences triable by Magistrate— Accused discharged—Whether section 250 applicable.

A complaint was made of offences under sections 307, 147 and 323 of the Indian Penal Code. The Magistrate ordered a police inquiry and the police reported that the case was one under section 147 and the injuries were trivial. Notice was issued by the Magistrate to the accused without mentioning any section. Although the summonses to the witnesses were issued, as a matter of routine, under section 307 because that section had been named by the complainant, it appeared that the Magistrate himself never had any idea that it would be necessary to frame a charge under that

*Criminal Revision No. 493 of 1930, from an order of Raghunath Prasad, Sessions Judge of Bulandshahr, dated the 31st of March, 1930.