

1930
 IN THE
 MATTER
 OF
 DEHRA DUN
 MUSSOORIE
 ELECTRIC
 TRAMWAY
 COMPANY.

England the word "revenue" is not used at all. Section 264 of the English Act is confined to all cesses, taxes, land-tax, property or income-tax. I am satisfied that "revenue" in this case means income. It is perfectly clear that the rent of the Government telephone lines and also the charge for trunk calls is the income of the Government, and therefore must be taken to be "revenue" within the meaning of section 230(1)(a) of the Indian Companies Act. I order therefore that priority be given to the amount of Rs. 481-5-0 in the winding up of this Company. It is to be noted that as far as the Dehra Dun Electric Tramway Company is concerned, the point raised today is merely an academic one. There are, I am informed, sufficient funds to meet all the debts of the company, whether they have to be paid in priority or not, and therefore the whole of this claim by the Telegraph Department will eventually be met.

REVISIONAL CRIMINAL.

Before Mr. Justice Bennet.

EMPEROR *v.* TAHAL SAITHWAR.*

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 July, 1.

Criminal Procedure Code, section 162—Statements made by witnesses to the investigating police—Right of accused to copies thereof—Stage at which such right can be exercised.

The right which an accused person has, under the first proviso to section 162 of the Criminal Procedure Code, to get a copy of the statement which had been made to the investigating police by a witness who is called for the prosecution, can be exercised when the witness for the prosecution has been called. The section does not provide or intend that the right can be exercised only after the cross-examination of the witness has begun and the cross-examination has laid the foundation for the suggestion that the evidence of the witness in court is contradicted by his previous statement to the police. *Madari Sikdar v. Emperor* (1), dissented from.

*Criminal Revision No. 273 of 1930, from an order of Muhammad Z'ul Hasan, Second Additional Sessions Judge of Gorakhpur, dated the 12th of April, 1930.

Mr. *Kumuda Prasad*, for the applicant.

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

 EMPEROR
 v.
 TAHAL
 SAITHWAR.

BENNET, J. :—This is an application on behalf of Tahal Saithwar in criminal revision dealing with a point of procedure. Tahal is being tried under sections 148 and 325 of the Indian Penal Code in the court of a Magistrate of Gorakhpur district. After the witnesses for the prosecution had been examined and before cross-examination began, the counsel for the defence made an application under section 162 of the Code of Criminal Procedure for copies of the statements of those prosecution witnesses recorded under section 161 of the Code of Criminal Procedure by the investigating police officer. The Magistrate and the Additional Sessions Judge have both held that the accused is not entitled to receive these copies, because they consider that that right would only arise in case the defence is able to show by cross-examination that there is some suggestion of contradiction by the witness of what he stated in the police inquiry. I find that this idea is supported by *Madari Sikdar v. Emperor* (1), where it is stated at page 311: "But the cross-examination must lay the foundation for the suggestion that the evidence given by the witness in court is contradicted by his statement recorded under section 161 of the Code of Criminal Procedure and it is only then that the accused is entitled to ask the Judge to refer to the writing and grant him copies. Section 162 does not impose the duty upon the Judge of granting copies of the statement recorded under section 161 before the cross-examination has been opened." I cannot find anything in section 162 of the Code of Criminal Procedure to support this view, and the first proviso which deals with the subject appears to me to be clearly contrary to the view laid down by the Calcutta High Court. This proviso states that the request should be made at the

(1) (1926) I.L.R., 54 Cal., 307 (311).

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stage when the witness for the prosecution has been called. I understand this to mean before the cross-examination of this witness. The purpose for which the statement shall be used is further laid down in the proviso, with the condition that the statement must be duly proved. But there is nothing in this portion of the proviso to indicate that there should be any cross-examination previous to granting the copy. Further, I am unable to understand what kind of procedure is suggested by the ruling of the Calcutta High Court. It would, in my opinion, be manifestly impossible for a defence counsel to establish some kind of contradiction in regard to a statement, of the nature of which he was not aware. I consider that to impose a condition such as is suggested by the Calcutta High Court on a defence counsel would be to hinder him in performing a duty to his client for which provision has been made in section 162 of the Code of Criminal Procedure. Accordingly I allow this application in revision and I direct that the Magistrate should furnish copies of the statements of witnesses called for the prosecution to the defence, unless he finds any part of those statements which should be excluded under the second proviso of section 162, in which case he may exclude that part. When these copies have been furnished, then the stay order will come to an end and the trial will proceed.