

1938

MAHANT  
HAR  
KISHAN  
DASS  
v.  
SATGUR  
PRASAD

We allow the appeal with costs and having come to a conclusion contrary to the decision of the learned trial Judge on the question of *res judicata*, remand the case for trial under Order XLI, rule 23, C. P. C. The costs of the trial court will abide the result.

*Appeal allowed*

## REVISIONAL CRIMINAL

*Before Mr. Justice Ziaul Hasan*

1938

October, 5

KING-EMPEROR (COMPLAINANT-APPLICANT) v. SAMI-  
ULLAH (ACCUSED-OPPOSITE-PARTY)\*

*Criminal Procedure Code (Act V of 1898), section 162—Statements made by witnesses before police investigation officer, signed by the witnesses—Statements if admissible in evidence—Evidence hearsay—Statements of police officer about facts based on result of his investigation, whether hearsay and inadmissible.*

Where in the course of his investigation a circle inspector of police causes the witnesses to sign the statements made by them before him, the evidence of such witnesses becomes inadmissible. *Bhuneshwari Pershad v. King-Emperor*, (1) relied on.

Where the statement of a police officer about the facts is the result of his investigation it is hearsay and is inadmissible in evidence.

Mr. *Hakim Uddin Siddiqi*, for the accused.

Assistant Government Advocate, for the crown.

ZIAUL HASAN, J.:—Samiullah, head constable of the Tambaur police station, district Sitapur, was prosecuted under section 29 of the Police Act on a complaint made by the Superintendent of Police, Sitapur, and was convicted and sentenced to pay a fine of Rs.25 by a Magistrate of the first class. He filed an application in revision against the Magistrate's order in the court of the Sessions Judge of Sitapur and the learned Judge

\*Criminal Reference No 36 of 1938, made by N. Storr, Esq., J.C.S., Sessions Judge of Sitapur.

(1) (1931) I.L.R., 6 Luck., 668.

has made this reference to this Court recommending that the conviction and sentence of Samiullah be set aside.

The charge against Samiullah was that on the morning of the 22nd January, 1937, while he was head moharrir of thana Tambaur, he refused to record a report that Najju and Gulzar wanted to lodge at the police station. How this charge came to be brought against Samiullah requires some explanation.

It appears that on the night of the 21st January, 1937, Mohammad Husain, constable of the Tambaur thana, who is said to be nephew of Samiullah, was deputed to go on patrol duty in Rihar. It was said that knowing that there was a case in the Rihar panchayat against certain Gulzar, Najju, Sadal and Chiddu, he wanted to turn this knowledge to his own advantage. He accordingly approached these persons and telling them that he had a warrant from the panchayat for their arrest asked them to pay him Rs.10 each, in which case he said that he would not serve the warrants upon them. There was a discussion between him and these persons and Mohammad Husain is said to have tortured them with the help of one Gokaran with the result that the villagers agreed to pay him Rs.5 each. Najju went to his house on the pretext of bringing the money. He did not turn up and Mohammad Husain after waiting for him some time went in search of him. By this time it had become dark and Mohammad Husain took out some straw from the thatched roof of Najju's house and burnt it to make some light but by accident the fire caught the *chappar* which began to burn. Alarmed at this Mohammad Husain left the village precipitately but in order to make a *peshbandi* he went to the police station Tambaur and made a report implicating the four persons named above under sections 224, 225, and 332, I. P. C. This report Mohammad Husain is said to have made falsely and in collusion with his uncle Samiullah. On the next morning Najju and Gulzar came

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to the thana to make a report against Mohammad Husain. They met Lakshmi Chandra sub-inspector, who was preparing to go out of the thana, and the sub-inspector directed Samiullah to take down Najju and Gulzar's report and went away. Samiullah however refused to record Najju and Gulzar's report but instead put them in the lock-up on the report made by Mohammad Husain. Investigation was made by a police circle inspector with the result that while a case under section 347 I. P. C. and another under section 211, I. P. C. were launched against constable Mohammad Husain, Samiullah was prosecuted under section 29 of the Police Act. Mohammad Husain was convicted on both the charges and sentenced to four months' rigorous imprisonment under each of the charges and in addition to a fine of Rs.15 under section 347, I. P. C. Mohammad Husain appealed against his convictions and sentences and Samiullah applied in revision to the learned Sessions Judge. The learned Judge accepted the appeal of Mohammad Husain and set aside his convictions under both the charges and in the case of Samiullah made the present reference.

Although the case against Samiullah rests entirely on the oral evidence of witnesses and while the learned trying Magistrate believed those witnesses, the learned Sessions Judge has disbelieved them, still after hearing at length the learned Assistant Government Advocate against the present reference and the counsel for Samiullah in support of it I have come to the conclusion that the reference should be accepted.

The conviction of Samiullah was based on the evidence of sub-inspector Hamid Ali P. W. 1, Gulzar P. W. 2, Ehtisham Husain P. W. 3, Najju P. W. 4, Mahabir P. W. 5 and Maqbool Husain P. W. 6, and the learned Magistrate examined Lakshmi Chandra, station officer of the thana at the time of the alleged occurrence, under section 540, Cr. P. C. So far as the evidence

of Hamid Ali, Ehtisham Husain and Mahabir is concerned I agree with the learned Sessions Judge that it was not admissible. Sub-Inspector Hamid Ali succeeded Lakshmi Chandra as the station officer of Tambaur and what he stated about the facts was the result of his investigation and therefore entirely hearsay. The evidence of Ehtisham Husain and Mahabir was inadmissible on the principle laid down in *Bhuneshwari Pershad v. King-Emperor* (1) as in the course of his investigation the circle inspector caused these witnesses to sign the statements made by them before him. Now remains the evidence of Najju, Gulzar and Maqbool Husain constable. Najju and Gulzar were themselves complainants in the case and therefore most interested. Moreover the learned Sessions Judge has referred to the discrepancies that exist between their statements in court and those made before the police. Maqbool Husain was a constable of Tambaur who was under suspension at the time and was subsequently dismissed. While stating that when Mohammad Husain came to thana he was not accompanied by any persons and that Najju and Gulzar came to the thana to lodge a report, he also admitted that Mohammad Husain told him that he had brought some people under arrest and that he saw that Mohammad Husain's uniform was torn. He also stated in cross-examination that he could not say whether Najju and Gulzar's report was or was not recorded by Samiullah. On the evidence of Babu Lakshmi Chandra, sub-inspector the learned Magistrate has not relied. He has only remarked that the sub-inspector took no steps in the matter till the 7th February, 1937, but this does not seem to be correct as the evidence of Maqbool Husain constable itself shows that the sub-inspector went to Rihar on the 23rd January, 1937.

Putting aside the evidence of sub-inspector Hamid Ali, Ehtisham Husain and Mahabir witnesses the rest

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of the evidence against Samiullah was such as left the case against Samiullah at least doubtful and the benefit of the doubt should have been given to the accused.

I therefore accept this reference and set aside Samiullah's conviction and sentence under section 29 of the Police Act.

*Reference accepted.*

## REVISIONAL CRIMINAL

*Before Mr. Justice G. H. Thomas, Chief Judge*

1938  
October, 12

KING-EMPEROR (COMPLAINANT-APPLICANT) v. BEHARI  
(ACCUSED-OPPOSITE-PARTY)\*

*Criminal Tribes Act (VI of 1924), sections 23 and 24—“Any other such offence” in section 23, meaning of—Conviction for offence not mentioned in Schedule—Section 23, applicability of—Conviction under section 24—Accused previously convicted of only one offence mentioned in Schedule I—Accused if liable to enhanced punishment.*

Section 23 of the Criminal Tribes Act refers only to convictions for offences specified in Schedule I and has no application to a conviction for an offence which is not contained in Schedule I. The words “any other such offence” used in the section mean one of those offences mentioned in the Schedule. The section has in mind not only the previous convictions of the accused but also the offence for which he is being tried.

On a conviction under section 24 of the Criminal Tribes Act the accused is not liable to enhanced punishment if he has been previously convicted of only one offence mentioned in Schedule I of the Act.

The Assistant Government Advocate, for the Crown.  
No one for opposite party.

THOMAS, C.J.:—This is a reference under section 438 of the Code of Criminal Procedure by the learned Sessions Judge of Sitapur recommending that the order of commitment passed by Mr. D. P Hardy be quashed.

One Behari, a member of a registered criminal tribe, was sent up before the learned Sub-Divisional Magistrate, first class, of Misrikh, on the charge of being

\*Criminal Reference No. 50 of 1938, made by N. Storr, Esq., Sessions Judge of Sitapur.