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unreported decision of this Court in *Rai Bahadur Kashi Nath Singh* v. *Syed Kabiruddin* (1)]. The latter case was cited by Mr. *Noresh Chandra Sinha* on behalf of the judgment-debtor appellant. The learned Chief Justice, however, held that an application need not be in writing and that a verbal application is sufficient to extend the period for execution of the decree provided it is a definite application in order to oppose an application of the judgment-debtor to set aside the execution proceedings. There can hardly be any doubt that the decree-holders are entitled to regard any step taken by them to remove the obstacle thrown by the judgment-debtor in their way to the realization of their decree as a step-in-aid of execution.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Adami and Bucknill, J.J.

GUHI MIAN

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v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 162—*Statement by witness in court—whether he can be asked whether he had made that statement to the police.*

Where, during a trial, a witness makes a statement, he may be asked by the prosecution whether he had made that statement to the police, and the investigating police officer may also be asked whether the witness had made that statement to him.

* Criminal Revision no. 541 of 1924, from an order of G. J. Monahan, Esq., I.C.S., Sessions Judge of Monghyr, dated 3rd September, 1924, affirming an order of B. Raghunandan Pandey, Deputy Magistrate of Monghyr, dated 22nd December, 1923.

(1) M. A. 281 of 1923 (unreported).

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This case came before the High Court in its revisional jurisdiction. Guhi had been found guilty under sections 457, 380 and 332 of the Indian Penal Code and sentenced to one year's rigorous imprisonment under section 380 and to six months' rigorous imprisonment under section 332, the sentences running consecutively; Nazir had been convicted under sections 457 and 380 read with section 75, and under section 380 read with section 75; he had been sentenced to two years' rigorous imprisonment; Miro had been sentenced to one year's rigorous imprisonment under section 380

The prosecution case was to the effect that on the night of the 14th of August, 1924, two constables were on duty at 3-30 A.M. near the Purab Sarai railway station. They saw six men coming along with bundles and being suspicious they challenged them. The men began to walk away rapidly and then the constables turned their lanterns towards them and one of the constables recognized the three petitioners and another man and suspected them. The constables gave chase and constable Jasoda arrested Miro with property on him and Baldeo arrested a man called Panchoo. Miro threw his bundle at Jasoda and upset him on to the railway line, while Guhi attacked Baldeo with a *sindhkathi*. The constables then raised a cry and the people of the neighbourhood came but were prevented from joining in the chase by the railway gate which was closed. The thieves ran away, leaving some property which the constables took to the police-station where they made a report at 4 o'clock in the morning. It happened that that same night there had been a theft in the house of a pleader called Bindeswari Prasad. When the police officers at the police-station were examining the property recovered from the men who had run away, they found a visiting card of Bindeswari Babu in the pockets of a coat, so the Sub-Inspector went to Bindeswari Babu and asked him whether there had been any theft at his house. Bindeswari said that there had been, his house had been broken into and his

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property taken away. A first information was drawn up and on the statements of the constables as to the names of the men they had seen the petitioners in this case were arrested and put upon their trial with the result that they were convicted and sentenced as stated above.

In his judgment the learned Deputy Magistrate stated that he believed the constables and on the basis of their statements as also because a coat which had been found in the petitioner Guhi's house where it was searched fitted Bindeswari Babu, he convicted the petitioners. He mentioned in his judgment that some of the witnesses had given evidence favourable to the defence and quite contradictory to the statements made by them before the police. Appeals were made to the learned Sessions Judge against the convictions, and, after hearing the arguments, the learned Sessions Judge decided that it was necessary to call for additional evidence to clear up some points. It seems that two of the prosecution witnesses nos. 4 and 5 had in their depositions stated that it was not the constables who gave out the names of the petitioners at the time of the occurrence but that the head constable, Ali Buksh, had come up and had suggested to the constables the names they should give out. It may be mentioned that while the defence did not deny that there had been a theft in the house of Babu Bindeswari Prasad or that the constables had met certain persons carrying bundles at 3-30 A.M. and had sought to arrest these persons, they emphatically denied that they were the persons whom the constables had seen and sought to arrest.

According to the defence, the head constable at the police-station had a brother with whom the petitioners had quarrelled, and the defence suggested that when the head constable came up and heard from the constables that certain men had escaped he suggested to the constables that they should say that the petitioners were the men who had escaped. The

prosecution witnesses nos. 4 and 5 as well as prosecution witness no. 17 supported this defence story by stating that it was the head constable who had given out the names of the men who had been seen.

In his first judgment the learned Sessions Judge said:

"Two of the prosecution witnesses, P. Ws. 4 and 5, have been declared hostile by the prosecution and have been cross-examined as regards certain alleged discrepancies between their present statements and their previous statements made to the Sub-Inspector with reference to whether the appellants were first named by the constable or by the head constable. However, P. W. 6 the Sub-Inspector has not been asked whether or not they made these statements. This is a defect which should be removed. Also I find that P.W. 17 has made a statement in Court in cross-examination as regards the *jamadar* having mentioned the names of the thieves to the constables. This witness has not been declared hostile and has not been cross-examined by the prosecution on this point. In my opinion it is necessary to determine whether this witness made this statement to the Sub-Inspector or whether it is a subsequent addition to his evidence. Thus he should be examined further on this point by the lower Court and his statements to the Sub-Inspector should be proved in so far as they are admissible in evidence. I find from the police diary that this witness, Mangal Mahton, has made two statements to the Sub-Inspector. He should be examined by the Court as regards both these statements so far as they are admissible. Also the Sub-Inspector should be examined to prove these statements to the same extent. I therefore remand this case to the lower Court in order that P. W. 4 Bulaki Mahton, P. W. 5 Gopal Turha, P. W. 6 the Sub-Inspector Chedam Tewari and P. W. 17 Mangal Mahton may be further examined on these points. This evidence must be taken in the presence of the accused persons who must be given the opportunity of cross-examining these witnesses further and of producing such further rebutting evidence as may be necessary."

Then the learned Sessions Judge remarked that there were two points on which he wished to have the Magistrate's report. One was the point whether a coat which had been said in the judgment to have fitted Bindeswari Prasad was tried on him in Court or not; and the second was the point of three coats which were shown to Bindeswari Babu's *dhobi* who was the owner of two of them.

The case was remanded to the Deputy Magistrate who took evidence and submitted it to the Sessions Judge who thereupon proceeded to pass judgment in the case. The learned Sessions Judge pointed out that

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some of the evidence of the Sub-Inspector taken after remand was not in accordance with the provisions of section 162 of the Code of Criminal Procedure, and so certain portions of the statement of Mangal Mahton which had been proved after remand by the Sub-Inspector were inadmissible. The Sessions Judge held that the fact that the witness did not mention to the police certain statements made by him in Court was admissible under the present law. The Sessions Judge discarded the evidence of the witnesses nos. 4, 5 and 17 as being unreliable and upheld the convictions of the petitioners on the evidence of the two constables and a third witness, prosecution witness no. 3.

Cur. adv. vult.

C. M. Agarwala (for *Muhammad Yunus*), for the petitioners.

Sultan Ahmed, Government Advocate, for the Crown.

Nov. 13.

ADAMI, J. (after stating the facts, as set out above, proceeded as follows): Mr. *Agarwala* who appears for the petitioner contends that the conviction cannot be upheld inasmuch as the remand by the Sessions Judge was not a remand contemplated by the law and also that parts of the evidence taken on remand are not admissible. He refers us to section 162 of the Code of Criminal Procedure and argues that under the present law the Court could not allow questions to be put by the prosecution as to statements made to the police. Now it is quite true that under section 162 statements made to the police by witnesses can only be used by the defence for the purpose of contradicting the prosecution witnesses; but in this case it is quite clear that after a witness had made some statement before the Deputy Magistrate he was asked if he had made that statement to the police and thereafter when the Sub-Inspector was examined he was asked whether the witness had made that statement to him. Neither the witness nor the Sub-Inspector were asked what

statements they made and no statement was introduced into the evidence as having been made by the witness before the Sub-Inspector. I agree with the learned Government Advocate that the provisions of section 162 do not prevent the prosecution, after a witness has made a statement, asking him simply whether he made that statement to the police, or when a witness has made a statement in his evidence from asking the Sub-Inspector whether in fact the witness had made that statement to him. In doing this there is no use of the statements recorded by the police during their investigation; the witnesses or the Sub-Inspector are merely asked as to a certain fact. I therefore think that there was nothing wrong in the questions which were put to the witnesses or the Sub-Inspector.

There is no doubt that it was open to the Court under section 428 to call for additional evidence. Mr. *Agarwala* argues that the section is not intended for the purpose of curing bad evidence or enabling the prosecution to make up for carelessness during the trial. The intention of the section is that the Court should be enabled to do justice, and in this case I think the learned Sessions Judge was justified. He has rightly discarded the evidence which the Deputy Magistrate had allowed to enter into the record on remand and has ruled it to be inadmissible.

Mr. *Agarwala* also argues that though under section 428 the Sessions Judge may call for additional evidence he is not enabled by that section to call for a report from the Magistrate as to what happened in Court. This contention is quite true; but in the present case the result of the report was all in favour of the petitioners and on the basis of that report the Sessions Judge refused to give any weight to the evidence as to the finding of the coat in the house of the petitioner Guhi. Furthermore it is to be remarked that no protest was lodged either in the Court of the Sessions Judge or in the Court of the Deputy Magistrate against the order of remand. The

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defence in fact took advantage of the order in producing five further defence witnesses. I do not think that at this stage under the circumstances they are entitled to come forward and object to the remand as a whole.

ADAMI, J.

As the case comes to us on revision, it is not fit for us to look into the facts, and the points I have mentioned are the only points which have been urged before us.

The Courts below have both found as a fact that the constables recognized the petitioners and have believed a third witness; they have disbelieved both the story of enmity on the part of the head constable and the story of his having prompted the constables as to the persons whom they were to name.

On these findings as to the points of law there is no reason to interfere in the case, and the application must be rejected.

BUCKNILL, J.—I agree.

Application rejected.

REFERENCE UNDER THE INCOME-TAX ACT, 1922.

Before Dawson Miller, C.J. and Mullick, J.

SIR SAIYID ALI IMAM

v.

THE CROWN.*

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Oct. 31.
Nov. 3, 14.

Income-Tax Act, 1922 (Act XI of 1922), sections 6 and 7(1)—"received" and "salary" meaning of—receipt for money signed in British India, effect of—honorarium in lieu of balance of salary for unserved period of service.

Income is "received" within the meaning of section 4(1) of the Income-Tax Act, 1922, at the point of time when the recipient first acquires control over it.

* Miscellaneous Judicial Case no. 58 of 1924.