

examine the accounts; and if that is so, it is clearly within the jurisdiction of the District Judge to call upon the guardian to pay into Court any sum that he may find due upon a true account of the affairs of the minor. I am, therefore, of opinion that the learned District Judge was within his jurisdiction in imposing the fine. On the merits, however, having regard to the fact that a substantial portion of the amount disallowed by the District Judge has been allowed by this Court, it is not proper to impose a fine upon the guardian in the present case.

1927.

SAYYID
MUHAMMAD
FARIDUDDIN
AHMAD
v.
SAYYID
MUHAMMAD
ABDUL
WAHAB.

KULWANT
SARAY, J.

The order imposing the fine is, therefore, set aside. It will no doubt be open to the District Judge to act under this section if the guardian again fails to deposit the amount found due within the time to be fixed by him.

MACPHERSON, J.—I agree.

APPELLATE CRIMINAL.

Before Jwala Prasad and Ross, JJ.

HAKIM WAJID ALI

v.

KING-EMPEROR.*

1927.

Nov., 8.

Code of Criminal Procedure, 1898 (Act V of 1898), section 162—witness tendered by prosecution—cross-examination declined—witness discharged—application for copy of statement made to police, accused not entitled to.

Where a witness, tendered but not examined in chief by the prosecution, is not cross-examined, the accused is not entitled to a copy of the statement made by the witness in the course of the police investigation.

In the course of a jury trial in the Session Court it transpired that a witness tendered by the prosecution for cross-examination on the 1st June had been examined twice during

*Criminal Appeal no. 162 of 1927, from a decision of Amar Nath Chattarji, Esq., Assistant Sessions Judge of Patna, dated the 18th of July, 1927.

1927.

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EMPEROR.

the police investigation. The defence were given a copy of the first statement made to the police but they did not cross-examine the witness and he was discharged. On the 20th June they applied for a copy of the second statement made to the police. The Court refused the application on the ground that as he had made no statement at the trial at all there was nothing which could be contradicted by the entry in the police diary.

Sir Ali Imam (with him *Mohammad Naim* and *S. Nooruddin*) contended that the accused had been prejudiced in his defence and that the verdict of the jury convicting the accused persons was, therefore, vitiated.

C. M. Agarwala, Assistant Government Advocate, for the Crown, relied on *Madari Sikdar v. Emperor* (1) and *Saadat Mian v. King-Emperor* (2).

Ross, J. (after stating the facts of the case, and finding that there had been no misdirection in the charge to the jury, as contended by the defence, proceeded as follows):—A minor point, a point of law, was also raised, namely, that the learned Judge erred in refusing to furnish the accused with a copy of the statement made to the police by a witness who was tendered by the Public Prosecutor but not examined. It appears that this witness Basdeo Singh (witness no. 12, a constable) was tendered by the prosecution on the 1st of June and was discharged without being examined or cross-examined; and, on the 20th of June, the defence applied for a copy of his statement to the police. Under section 162 of the Code of Criminal Procedure a copy could have been given in order that it might be used for contradicting the witness; but, as the witness had made no statement, the learned Judge in my opinion rightly refused the application. In any case, the point is of academic interest only.

JWALA PRASAD, J.—I agree.

C. M. A.

(1) (1927) I. L. R. 54 Cal. 807.

(2) (1927) I. L. R. 6 Pat. 329.