MISCELLANEOUS CRIMINAL.

Before Mr. Justice Bhide.

FAQIR SINGH—PETITIONER

versus

THE CROWN—RESPONDENT.

1928

April 27.

Criminal Miscellaneous No. 66 of 1928.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), section 342—accused—cross-examination of—in the manner of an adverse witness—use of such examination by prosecution to rebut defence so disclosed by additional evidence—propriety of—section 364—statement of accused—shown to him subsequently for correction after being typed—correction by accused—adverse criticism of such correction by Magistrate—legality of—Transfer of case—reasonable apprehension of not getting a fair and impartial trial.

Where before the close of the prosecution evidence the accused was examined at great length under section 342, Criminal Procedure Code, and as many as 79 questions were put to him.

Held, that the object of the examination of an accused person under that section is only to enable him to explain any circumstances appearing in evidence against him and that the examination ought not to be conducted in the manner of cross-examination of an adverse witness, and that a Judge or Magistrate is not entitled to establish a sort of a Court of inquisition to force a prisoner to commit himself by making some incriminating or embarrassing admissions or statements after a series of questions, the exact effect of which he may not be able to comprehend.

Hossein Buksh v. *The Empress* (1), *Umar Din* v. *Crown* (2), *Hurry Churn* v. *The Empress* (3), *Emperor* v. *Anant Narayan* (4), *Queen-Empress* v. *Rangi* (5), and *Niru Bhagat* v. *King-Emperor* (6), referred to.

(1) (1881) I. L. R. 6 Cal. 96.
(2) (1921) I. L. R. 2 Lah. 129.
(3) (1884) I. L. R. 10 Cal. 140.
(4) (1904) 6 Bom. L. R. 94.
(5) (1887) I. L. R. 10 Mad. 295.
(6) (1922) I. L. R. 1 Pat. 630.

1928

FAQIR SINGH
v.
THE CROWN.

Where several of the questions put to the accused were of the above nature and additional witnesses were produced by the prosecution simply to rebut the defence disclosed in the course of such examination.

Held, that this was certainly not a proper use of section 342, Criminal Procedure Code.

Where the statement of the accused taken down by the trial Magistrate was shown to him 13 days later after it had been typed, and the accused, then, corrected it in certain particulars and with respect to these corrections the Magistrate made the following note: "some alterations made at the instance of the accused, which completely change his answers. I am sure what I took down was correct and *I shall treat these amendments as an after-thought* ".

Held, that according to the provisions of section 364, Criminal Procedure Code, the accused was entitled to explain or add to his answers when the statement was shown or read over to him and it was the duty of the Magistrate to make the record "conformable to what he declared to be the truth" and then append the necessary certificate. It is the statement as finally declared by the accused to be true that is to be accepted as representing his defence, and the Magistrate should not have expressed any opinion about it till the conclusion of the case. The note made by him may reasonably create an impression that he had already made up his mind as to the value of the defence set up by the accused as indicated in the corrections made by him.

Held also, that it is well settled that in support of an application for transfer it is sufficient for an applicant to prove circumstances likely to give rise to a reasonable apprehension in his mind that he will not get a fair trial, and it is not necessary for him to prove any actual bias or prejudice in the mind of the Judge.

Sardari Lal v. *Crown* (1), *Amar Singh* v. *Sadhu Singh* (2), referred to.

Application for transfer of the case Crown v. *Faqir Singh pending in the Court of Mr. E. H. Lincoln, Additional District Magistrate, Lahore, to some other Court.*

(1) (1922) I. L. R. 3 Lah. 443. (2) (1915) I. L. R. 6 Lah. 396.

1928

FAQIR SINGH
v.
THE CROWN.

J. G. SETHI, for Petitioner.

CARDEN-NOAD, Government Advocate, and AHMAD HASSAN, Special Public Prosecutor, for Respondent.

ORDER.

BHIDE J.

BHIDE J.—This is an application for transfer of a criminal case under sections 477 (A), 193, and 420/511, Indian Penal Code, pending against the applicant *Bawa* Faqir Singh, an advocate, from the Court of Mr. Lincoln, Additional District Magistrate, Lahore. In the affidavit filed in support of the application, a large number of allegations of various sorts have been made, but the material ones may be conveniently grouped under the following heads :—

(*i*) It is alleged that the learned Magistrate has deliberately refused to give facilities to the applicant to prosecute his civil suit connected with the same facts on which the prosecution is based and that the record of the civil suit was unnecessarily sent for and detained by him so as to delay the decision of that suit.

(*ii*) That the applicant when examined under section 342, Criminal Procedure Code, was put questions by way of cross-examination on several points contrary to the provisions of that section merely with a view to elicit his defence and then the prosecution was allowed to call additional witnesses to rebut the defence.

(*iii*) That the learned Magistrate has committed many irregularities in procedure. He does not allow the applicant sufficient latitude to cross-examine witnesses, does not read over statements of witnesses to them, and threatens applicant with prosecution. He also does not allow him facilities for inspection of the record.

1928

FAQIR SINGH v. THE CROWN.

BHIDE J.

(*iv*) That the learned Magistrate did not postpone the case and give reasonable time to the applicant to enable him to file an application for transfer, as required by section 526, Criminal Procedure Code.

As regards the first point, it appears that the 20th December 1927 had been fixed for hearing in the civil case. The criminal case to which this application relates was transferred to the Court of Mr. Lincoln on the 7th December 1927. The applicant's allegation is that it was brought to the notice of the learned Magistrate that the 20th December was fixed for hearing in the civil case at Julundur that a large number of witnesses had been summoned, and that the applicant himself was also to appear as his own witness therein on that date, and that the learned Magistrate was requested to fix some other date, but he insisted on fixing and did fix the 20th December 1927 as the date of hearing in the criminal case and refused even to dispense with the applicant's personal attendance before him on that date. The learned Magistrate has said in his explanation on this point that he fixed his date according to his convenience and that the date in the civil case was *subsequently* brought to his notice. My attention has, however, been drawn in this connection to an application dated 15th December 1927 presented to the Magistrate in which the applicant definitely stated that the date in the civil suit was brought to his notice *before* the date in the criminal case was fixed. The learned Magistrate in his order on that application did not say that the above statement in the application was not correct. It seems, therefore, that the learned Magistrate either overlooked the aforesaid statement in the application or has forgotten it.

1928

FAQIR SINGH
v.
THE CROWN.

BHIDE J.

The record of the civil suit was sent for by the learned Magistrate at the request of the Public Prosecutor and seems to have been kept in his Court for a long time, although it was not at all required for immediate use. It was admitted before me that there was only one document on the record of the civil case which the prosecution required, and that it has not up till now been used by the prosecution in the examination of a single witness, though the trial has lasted over three months since the record was sent for. The applicant made a very reasonable request to the learned Magistrate that a certified copy of the whole record of the civil case might be prepared at his expense and kept by the Magistrate for reference, if necessary, but even this request was refused. No attempt has been made by the learned Government Advocate to justify this attitude of the learned Magistrate.

It may be that the learned Magistrate was only anxious to push on with this criminal case, which had been badly delayed ; but it must, I think, be said that the attitude taken up by him in connection with the requests made by the applicant in connection with his civil suit was likely to create a reasonable apprehension in the mind of the applicant that the learned Magistrate was prejudiced against him and that he was not likely to get a fair trial at his hands.

Before the close of the prosecution evidence the applicant was examined at great length under section 342, Criminal Procedure Code, on the 13th January 1928, and as many as 79 questions were put to him.

The object of the examination of an accused person under that section is only to enable him to

1928

FAQIR SINGH
v.
THE CROWN.

BHIDE J.

explain any circumstances appearing in evidence against him. It has been repeatedly held that the examination ought not to be conducted in the manner of cross-examination of an adverse witness and that a judge or magistrate is not entitled to establish a sort of a Court of inquisition to force a prisoner to commit himself by making some incriminating or embarrassing admissions or statements after a series of questions, the exact effect of which he may not be able to comprehend. (See *inter alia Hossein Bakhsh* v. *The Empress* (1), *Umar Din* v. *Crown* (2), *Hurry Churn* v. *The Empress* (3), *Emperor* v. *Anant Narayan* (4), *Queen-Empress* v. *Rangi* (5), *Niru Bhagat* v. *King-Emperor* (6). In the present instance several of the questions appear to be of this nature (see *e.g.*, questions Nos. 26, 31, 32, 43, 55, 65, 66, 67, 68, 69). It has been alleged that additional witnesses were produced by the prosecution simply to rebut the defence disclosed in the course of this examination and this fact has not been denied before me. This was certainly not a proper use of section 342, Criminal Procedure Code.

The statement of the applicant which was taken down on the 13th January 1928, was apparently shown to him 13 days later, after it had been typed. The applicant then corrected the statement in certain respects. With respect to these corrections the learned Magistrate made the following note :—

" Some alterations made at the instance of the accused, which completely change his answers. I am sure what I took down was correct and *I shall treat these amendments as an after-thought* ".

(1) (1881) I. L. R. 6 Cal. 96.
(2) (1921) I. L. R. 2 Lah. 129.
(3) (1884) I. L. R. 10 Cal. 140.
(4) (1904) 6 Bom. L. R. 94.
(5) (1887) I. L. R. 10 Mad. 295.
(6) (1922) I. L. R. 1 Pat. 630.

> the provisions of section 364, Code, the applicant was entitled his answers when the statement over to him and it was the duty to make the record " conformable d to be the truth" and then append certificate. It is the statement as by the accused to be true that is to representing his defence and the Magistrate should not have expressed any opinion about it till the conclusion of the case. The note made by the learned Magistrate may reasonably create an impression that he had already made up his mind as to the value of the defence set up by the applicant as indicated in the corrections made by him.

It is well established that in support of an application for transfer it is sufficient for an applicant to prove circumstances likely to give rise to a reasonable apprehension in his mind that he will not get a fair trial and it is not necessary for him to prove any actual bias or prejudice in the mind of the judge. [*Vide, inter alia, Sardari Lal* v. *Crown* (1), *Amar-Singh* v. *Sadhu Singh* (2)]. I think it must be held that such circumstances have been established in the present case.

On the above findings it is unnecessary for me to discuss the other irregularities alleged to have been committed. The applicant can urge them in appeal for what they may be worth, if and when the necessity arises.

I may, however, remark that while prompt disposal of a criminal case is a matter of importance,

(1) (1922) I. L. R. 3 Lah. 443. (2) (1925) I. L. R. 6 Lah. 398.

1928

FAQIR SINGH
v.
THE CROWN.

BHIDE J.

it is of equal or even greate
proper attention to the proced
so as to ensure on the one han
accused and at the same time t
for any failure of justice resultin
procedure.

The trial has already taken a l
necessity of transferring the case
be regretted. The applicant has, how
me that he has no desire to protract the proceedings,
and that neither he, nor the co-accused will ask for
a *de novo* trial, and has stated that if any such re-
quest is made either by him or the co-accused the
District Magistrate will be at liberty to retransfer
the case to the Court of Mr. Lincoln. (See petition
dated 25th April 1928 on the record).

I accept the application and order the case to be transferred to some other Magistrate competent to try the case, to be selected by the District Magistrate.

A. N. C.

Application accepted.