Before Mr. Justice Stevens and Mr. Justice Handley.

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Aug. 10, 13.

ISAB MANDAL (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

Evidence—Written statement recorded by police-officer during police investigation—Admissibility in evidence against person making it—Record—Intentionally giving false evidence—Proof necessary of each statement made—Code of Criminal Procedure (Act V of 1898), s. 162—Evidence Act (I of 1872), s. 35—Penal Code (Act XLV of 1860), s. 193.

There is nothing in s. 162 of the Code of Criminal Procedure, which limits the prohibition of the use of a written statement recorded by a police-officer, as evidence to the matter of the charge which is actually under investigation by the police-officer when the statement is made. The prohibition extends also to the use of such written statement against the person who is alleged to have made the statement.

Such a written statement does not come within the description of a record within the meaning of s. 35 of the Evidence Act, nor is it admissible in evidence under that section.

It is very irregular in a charge of intentionally giving false evidence to put the whole of a long statement bodily to a witness at once. A conviction on such a charge could be properly had only on proof that the accused person had made to the police-officer each and every statement contained in the document.

IN this case the police began an investigation into a case of murder; while that investigation was pending on a representation made by the District Superintendent of Police to the District Magistrate, a Deputy Magistrate was sent to make an inquiry into that case, and into a counter-charge which had been made against the informant in that case. The Deputy Magistrate, accordingly, went to the spot and instituted an inquiry. In the course of that inquiry he examined the petitioner as a witness, and in consequence of the statements, which he made on that occasion, he was confronted with a written statement which had been taken down by the Sub-Inspector of Police under the provisions of s. 162 of the Code of Criminal Procedure. The state-

* Criminal Revision No. 501 of 1900, made against the order passed by W. H. Lee, Esquire, Sessions Judge of Pabna and Bogra, dated the 15th of May 1900, affirming the order of Babu Kshirode Chunder Sen, Deputy Magistrate of Bogra, dated the 5th of May 1900.

ments therein contained were read over to the petitioner, and he was asked if he had made them to the Sub-Inspector. The petitioner said in reply that he had not made these statements. The Deputy Magistrate recorded a note that the witness was evidently speaking falsely, and that he should show cause why he should not be prosecuted under s. 193 of the Penal Code. A proceeding was instituted against him, the Sub-Inspector was examined and after stating specifically that the petitioner had made certain statements to him, he attested the statement taken down under s. 162 of the Code of Criminal Procedure, which statement was *put upon the record and marked as an exhibit*. The petitioner was sent up to the District Magistrate for prosecution under s. 193 of the Penal Code. The case was made over to another Deputy Magistrate, who proceeded to try the petitioner. The charge against the petitioner was that he had said on solemn affirmation that he had not made before the Sub-Inspector the statement recorded by him in the document marked as an exhibit by the Deputy Magistrate. The Sub-Inspector again gave evidence. He again attested the statement taken down in writing under s. 162 of the Code of Criminal Procedure and said "this (exhibit) is a record of his statement prepared by me." The petitioner was, on the 5th of May 1900, convicted under s. 193 of the Penal Code of intentionally giving false evidence in a stage of a judicial proceeding, and sentenced to rigorous imprisonment for eighteen months. The petitioner appealed to the Sessions Judge of Pubna, who on the 15th May 1900, dismissed the appeal.

Mr. *P. L. Roy* (with him M. *Abdul Jawad*) for the petitioner.

The *Deputy Legal Remembrancer* (Mr. *Leith*) for the Crown.

1900, AUGUST 13. The judgment of the Court (STEVENS and HANDLEY, JJ.) was delivered by

STEVENS, J.—This rule was issued in the following circumstances:—The police began an investigation into a case of murder, but, while that investigation was pending, on a representation made by the District Superintendent to the District Magistrate, the

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Deputy Magistrate, Babu Bhowany Prosad Neogi, was sent to make an inquiry into that case and into a counter-charge which had been made, as we understand, against the informant in that case. The Deputy Magistrate accordingly went to the spot and instituted an inquiry. In the course of that inquiry, he examined the present petitioner as a witness, and, in consequence of the statements which he made on that occasion, he confronted him with a written statement which had been taken down by the Sub-Inspector of Police under the provisions of s. 162 of the Code of Criminal Procedure. The Deputy Magistrate after asking the petitioner whether he had made a certain statement to the Sub-Inspector, recorded a note that the witness was evidently speaking falsehood and that he should show cause why he should not be prosecuted under s. 193 of the Indian Penal Code. A proceeding was instituted against him, the Sub-Inspector was examined and, after stating specifically that the petitioner had made certain statements to him, he attested the statement taken down under s. 162, which statement was put upon the record and marked as Exhibit D. Another witness gave evidence as to certain statements, which, he alleged, had been made by the petitioner to the Sub-Inspector. On these materials, the petitioner was sent up to the District Magistrate for prosecution under s. 193 of the Indian Penal Code. The case was made over to another Deputy Magistrate, who proceeded to try the petitioner and finally convicted him of intentionally giving false evidence in a stage of a judicial proceeding, and sentenced him to rigorous imprisonment for a year and a half under s. 193 of the Indian Penal Code. The Sub-Inspector, who had been examined as a witness in the former proceeding, again gave evidence. He again attested the statement taken down in writing under s. 162 and said:—"This(Exhibit B shown) is a record of his statement prepared by me." In addition to that he orally gave evidence as to certain statements which had been, as he alleged, made to him by the petitioner. Another Sub-Inspector was similarly examined with reference to a further statement in writing which he had taken down under s. 162. The rest of the evidence, so far as it relates to the statements made to the police-officer by the petitioner, is concerned only with isolated statements, and not with the whole of the statement as committed to writing by the Sub-Inspector in the document marked (Exhibit B).

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In the charge, the act charged against the petitioner was that he had said on solemn affirmation that he had not made before the Sub-Inspector Golam Hossein, the statement recorded by him in the document marked Exhibit B by the Deputy Magistrate.

The conviction was upheld by the Sessions Judge on appeal.

A rule was granted to show cause why the conviction should not be set aside on two grounds; first, that the written statement recorded by the police had been improperly used as evidence contrary to s. 162 of the Code of Criminal Procedure, and next, that the Deputy Magistrate, Babu Bhowany Persad Neogi, not being competent to hold a judicial inquiry in this matter, any statement made by the petitioner could not be properly regarded as a statement made in the course of a judicial proceeding.

We are clearly of opinion that the rule must be made absolute on the first ground. The Deputy Magistrate, who tried the case, has sent in an explanation in which he submits, first, that as the document was not used in the course of the murder case, the provisions of s. 162 did not apply to it, and it was admissible under the general provisions of s. 35 of the Indian Evidence Act, and, secondly, that, as a matter of fact, it was not used as evidence either by him or by the Deputy Magistrate who held the inquiry.

On the first point, there is nothing in s. 162 which limits the prohibition of the use of such document as evidence to the matter of the charge, which is actually under investigation by the police officer when the statement is made, and, to our mind, it extends also to the use of such a document against the person who is alleged to have made the statement. We think that it was intended to recognise the danger of placing implicit confidence in a record more or less imperfectly made by a police-officer who would not necessarily be competent to make an exactly correct record of the statement of a witness with due regard to the provisions of the law of evidence and who might, possibly in some cases, not be entirely free from an inclination (perhaps unconscious)

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to take the statement as being somewhat more definite and precise in a particular direction than the witness had intended it to be. We are unable to see that s. 33 of the Evidence Act has any application in the matter, for we do not consider that a document of this nature, which moreover is not necessarily a part of the official duty of a police-officer to prepare, at all comes within the description of a "record" within the meaning of that section, nor, even if it did, are the provisions of the section capable of being applied, so as to make the document to be used in evidence in the manner in which the Deputy Magistrate has used it.

With regard to the second submission of the Deputy Magistrate, we can only express our surprise at it, for it is, as we have shown, at variance with the actual facts as they appear on the face of the record. The statement taken down in writing under s. 162 was, as a matter of fact, admitted as an Exhibit and marked as such by both the Deputy Magistrates and the Sub-Inspector was allowed to attest it as "a record" of the statement which the petitioner had made to him.

We may say that we regard it as very irregular, in a charge of intentionally giving false evidence, to put the whole of a long statement bodily to a witness at once, but, as the Deputy Magistrate did so in this case, the conviction could be properly had only on proof that the accused person, now the petitioner, had made to the police-officer each and every one of the statements contained in the document. That has not been proved by oral evidence. It is unnecessary, in the view that we take of the question arising under s. 162 of the Code of Criminal Procedure, to express any opinion on the other point with reference to which the rule was granted. The conviction and sentence are set aside, and the petitioner will be discharged from bail.

D. S. *Rule made absolute.*