

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Ryves.

1909
Jan. 21.

SALT
v.
EMPEROR.*

Witness—Statement of witness taken by the police during the investigation and recorded in the Special Diary—Copies of such statements when to be given to the accused—Criminal Procedure Code (Act V of 1898), ss. 161 and 162—Practice.

Where the trying Magistrate, at the instance of the accused, called for the statements of certain prosecution witnesses recorded by the police during their investigation in the special diary and then returned them to the police without recording an order that he did not think it expedient in the interests of justice to furnish the accused with a copy, and also disallowed an application to summon a defence witness :—

Held, that the Sessions Judge should re-hear the appeal and examine this witness, and send for the statements recorded by the police and, if he found anything in them of advantage to the accused, that he should also summon the witnesses who made them and allow cross-examination after supplying the accused with a copy of their statements.

THE petitioner, who was a Claims Inspector on the Eastern Bengal State Railway, was charged with criminal breach of trust as a servant under section 408 of the Indian Penal Code, and convicted by the Joint Magistrate of Alipore, on the 14th September 1908, and sentenced to three months' rigorous imprisonment and a fine of Rs. 500. In September 1907 the petitioner was deputed by the Railway Company to Goalundo where, it was alleged, he sold 180 bags of damaged rice to one Buldeo Thakur and received a *hundsi* for Rs. 1,320 which he cashed in Calcutta, and of this sum he credited Rs. 820 to the Railway Company and misappropriated the balance. The trial commenced on the 3rd August 1908 upon further inquiry directed by the District Magistrate of Alipore, and on that day six prosecution witnesses were examined. The

* Criminal Revision No. 1378 of 1908, against the order of F. R. Roe, Sessions Judge of the 24-Parganas, dated Nov. 30, 1908.

case was next taken up on the 19th instant and four more prosecution witnesses were examined and four cross-examined. On the 21st, the other prosecution witnesses were cross-examined and a charge framed. The investigating police officer was then cross-examined by the defence, and admitted that statements of certain of the prosecution witnesses had been taken down in writing and were entered in the special diary. At the close of his cross-examination the counsel for the accused made a verbal application to the Magistrate for the production of these statements. The Magistrate, thereupon, ordered the police to produce the statements of these witnesses on the 1st September, on which date he passed the following order: "The statements called for by the defence from the Sealdah Police have been produced before me. They in no way contradict the evidence given, and I return them."

1909
SALT
v.
EMPEROR.

The accused had also applied to the Magistrate to summon Mr. Hardless, the Government hand-writing expert, to prove that the signature of his name on the *hundi* was not in his hand-writing, but the Magistrate refused the application.

The Court then proceeded with the case and the defence witnesses were examined, and the accused was ultimately convicted and sentenced. On appeal, the learned Sessions Judge of Alipore upheld the conviction but reduced the sentence. The petitioner then moved the High Court and obtained the present Rule.

Mr. Norton, Mr. Mehta and Babu Manmatha Nath Mukerji,
for the petitioner.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

HOLMWOOD AND RYVES JJ. We are of opinion that the best way of dealing with this Rule will be to direct that the learned Sessions Judge who heard the appeal should reconsider it after re-hearing counsel and examining Mr. Hardless as a witness. At the same time, as the petitioner has taken the ground that the statements before the police, whether contained in a special diary or in a diary under section 161

1909
SALT
v.
EMPEROR.

of the Criminal Procedure Code, of Tilak Chand Borad and of Tilak Chand, were sent for but no order was passed stating that the Court did not think it expedient in the interests of justice to furnish him with a copy, we think that the learned Sessions Judge should himself send for and consider the statements of these two witnesses and, if he finds that there is anything in them upon which the petitioner would be advantaged by being allowed to cross-examine thereon, he should also re-summon those witnesses and submit them for cross-examination after supplying copies of their statements to the petitioner.

We, therefore, make the Rule absolute in these terms, and remit the case to the same learned Sessions Judge of Alipore for re-hearing the appeal.

The petitioner will remain on the same bail.

Rule absolute.

E. H. M.

CRIMINAL REFERENCE.

Before Mr. Justice Carnduff and Mr. Justice Doss.

1909
Feb. 12.

SALIGRAM SINGH

v.

EMPEROR.*

Surety bond—Liability of Surety on forfeiture of bond by Principal—Recovery of amounts of the bonds from both Principal and Surety—Criminal Procedure Code (Act V of 1908), s. 514 and Sch. V, Form XI.

Upon the forfeiture of a bond by a person to keep the peace for a term, the surety is liable to pay the amount specified in his bond in addition to the penalty paid by the principal.

Emperor v. Nga Kaung (1) dissented from.

The object of requiring a surety to such a bond is not to ensure the recovery of the amount of the bond from the principal, but to serve as an additional security for his keeping the peace.

Queen-Empress v. Rahim Bakhsh (2) referred to.

*Criminal Reference No. 234 of 1908, by C. W. E. Pittar, Sessions Judge of Patna, dated Nov. 27, 1908.

(1) (1905) U. B. R. 31;

(2) (1898) I. L. R. 20 All. 206.

2 Cr. L. J. Ind. 463.