

The State of Punjab v. Mohinder Singh, etc. (Pattar, J.)

(6) In these circumstances, I have no hesitation in allowing this appeal, in setting aside and reversing the order of the trial Court, and in allowing the application of the company to file the arbitration agreement contained in the hire-purchase agreement Exhibit P. 1 in Court. The said agreement has already been filed, admitted and proved. I, therefore, refer the claim of the appellant-company to the sole arbitration of Mr. C. L. Vohra, Advocate, Civil Lines, Jullundur, the arbitrator named in the agreement. The company may file its claim before the arbitrator who will give notices of the claim to all the respondents and thereafter proceed with the reference in accordance with law. He shall file his award within four months from today unless he applies for extension of time either before or after that date. The fee of the arbitrator which is tentatively fixed at Rs. 500 shall be paid by the official Liquidator after the Arbitrator files his award in this Court. The original documents on the record of this case, if any, which have not been admitted into evidence may be returned to the respective parties who produced them so that they may produce the same before the arbitrator if so advised. The documents which have already been admitted into evidence may be sent to the arbitrator with a covering letter and with a complete detailed list thereof by a special messenger (after receiving the consent to act from the arbitrator), and under clear acknowledgment of the arbitrator which may be obtained and placed on the record of this appeal.

(7) Since Mr. Krishan Lal Kapur has adopted a very fair attitude in this appeal, I do not think it proper to burden his client with the costs of this appeal. The parties are, therefore, left to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before Pritam Singh Pattar, J.

THE STATE OF PUNJAB—Petitioner

versus

MOHINDER SINGH, ETC.—Respondents.

Cr. R. 1159 of 1973

March 14, 1974.

Code of Criminal Procedure (Act V of 1898)—Sections 161(3), 162(1), 172, 173(4) and 207-A(3)—Investigation of a criminal case by

*two Police Officers—Copies of the statements recorded by both the Police Officers—Whether to be supplied to the accused—Statements of some witnesses not recorded under Section 161(3) of the Code but recorded in case diary maintained under Section 172—Such witnesses intended to be produced by the prosecution during trial—Accused whether entitled to the copies of the statements of the witnesses recorded in case diary.*

*Held*, that section 161(3) of the Code of Criminal Procedure, 1898 does not require a police officer to record in writing the statements of witnesses examined by him in the course of the investigation, but if he does record in writing any such statements, he must record the statement of each witness separately. If a case is investigated by two officers and the statements of the witnesses are first recorded by one investigating officer and again by a senior officer, copies of the statements recorded by both the Police Officers should be supplied to the accused in view of the provisions of section 173(4) of the Code.

*Held*, that if a Police Officer does not record the statements of all or some of the witnesses under section 161(3) of the Code, but cleverly incorporates the same in the case diary maintained under section 172 of the Code, in the belief that by doing so, those statements can be kept back from the knowledge of the accused, the accused cannot be deprived of the copies of those statements. The provisions of sections 162, 173(4) and 207-A(3) of the Code impose an obligation upon the prosecution agency to supply copies of statements of witnesses who are intended to be examined at the trial to enable the accused to obtain a clear picture of the case against him, to utilise them in the course of cross-examination to establish his defence and also to shake the testimony of the prosecution witnesses. The statements of witnesses during investigation, even if taken down by the police in case diary, can be used by the accused for purposes specified in proviso to section 162(1) of the Code. Very valuable right is given to the accused under this proviso and he can exercise this right only if the copies of all the statements made by the witnesses during the investigation, whether recorded under section 161(3) or in the police-diary maintained under section 172 of the Code, are supplied to him. Hence the accused is entitled to the copies of the statements of persons whom the prosecution proposes to examine as witnesses even though these statements are recorded in the police-diary.

*Petition under section 439 of the Code of Criminal Procedure for revision of the order of Shri S. S. Raikhy, Sessions Judge, Sangrur, dated the 22nd November, 1973 directing the prosecution to furnish free of cost copies of the statements of the prosecution witnesses Netar Singh, Darshan Singh son of Sucha Singh, Major Singh, Nachhattar Singh, Sub-Inspector, Karnail Singh and Balwant Singh, Assistant Sub-Inspector recorded by Surjit Singh, Deputy Superintendent of Police in the case diaries.*

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*Application under section 161 Cr. P.C. for furnishing the copies of statements of 1. Netar Singh, son of Ujagar Singh, 2. Darshan Singh son of Sucha Singh, 3. Major Singh son of Sucha Singh, 4. Nachhattar Singh son of Sarup Singh, 5. Darshan Singh, son of Basawa Singh, 6. Dr. M. P. Moonga, Rajendera Hospital, Patiala, 7. Shri Karnail Singh, S. I. 8. Shri Balwant Singh A.S.I. recorded by Shri Surjit Singh, D.S.P. Investigating Officer in a case under sections 302/452/324/323/148/149 I.P.C.*

Birinder Singh, Advocate, for the State petitioner.

Surjit Singh Dhaliwal, Advocate, for the respondent.

JUDGMENT

PATTAR, J.—This is a revision petition filed by the State of Punjab against the order dated November 22, 1973 of the Sessions Judge, Sangrur, whereby he directed the prosecution to furnish free of cost copies of the statements of the prosecution witnesses Netar Singh, Darshan Singh son of Sucha Singh, Major Singh, Nachhattar Singh, Sub-Inspector, Karnail Singh and Balwant Singh, Assistant Sub-Inspector recorded by Surjit Singh, Deputy Superintendent of Police in the case diary.

(2) The facts of this case are that Mohinder Singh and four others, residents of village Akbar Pur Chhanan, district Sangrur were committed by the Judicial Magistrate 1st Class to stand their trial in the Court of Session under section 302/149, 452/149, 324/149, 323/149 and 148, Indian Penal Code. In the Court of the Sessions Judge, the accused made an application that copies of the statements of the prosecution witnesses, who were proposed to be examined by the prosecution, recorded in the case diary by the Deputy Superintendent of Police Shri Surjit Singh during the investigation may be supplied to them. This application was opposed by the Public Prosecutor on the ground that the accused could get only copies of those documents which are mentioned in section 173, sub-section (4), Criminal Procedure Code, that the copies of the statements of the prosecution witnesses recorded under section 161(3) Criminal Procedure Code had already been supplied to them and that they were not entitled to the copies recorded in the case diaries by the Deputy Superintendent of Police. After hearing the counsel for the parties, the Sessions Judge, Sangrur directed the prosecution to furnish free of cost copies of statements of Netar Singh, Darshan Singh, Major Singh, Nachhattar Singh, P.Ws. besides the statements of Sub-Inspector Karnail Singh and A.S.I. Balwant Singh recorded

by the Deputy Superintendent of Police in the case diary during the investigation. Feeling dissatisfied, the State of Punjab filed this revision petition against this order.

(3) This case was investigated by two police officers, namely, Karnail Singh Sub-Inspector of Police and Shri Surjit Singh, Deputy Superintendent of Police. The accused have already been supplied the copies of the statements recorded under section 161, Criminal Procedure Code, by Karnail Singh Sub-Inspector. They have not been supplied so far the copies of the statements recorded by the Deputy Superintendent of Police in the case diary. In their application the accused asked for statements of eight prosecution witnesses, namely, Natar Singh, Darshan Singh, Major Singh, Nachhattar Singh, Sub-Inspector Karnail Singh and A.S.I. Balwant Singh, besides Darshan Singh son of Basawa Singh and Dr. Moonga. However, out of these eight witnesses, the statements of Darshan Singh son of Basawa Singh and Dr. Moonga were not recorded by the Deputy Superintendent of Police. The statements of the remaining six witnesses were recorded by the Deputy Superintendent of Police in the case diary. According to section 173(4), Criminal Procedure Code, the accused is entitled free of charge copies of the documents before the commencement of the enquiry/trial mentioned in that sub-section. This sub-section (4) of section 173 reads as follows:—

“After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any recorded under section 164 and the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

Thus, according to this provision, the prosecution has to furnish copies to the accused free of cost of the following documents:—

- (1) Copy of the report in the prescribed form forwarded to the Magistrate under sub-section (1) of section 173, Criminal Procedure Code.

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- (2) Copy of the first information report recorded under section 154, Criminal Procedure Code.
- (3) Copies of all other documents or relevant extracts thereof, on which the prosecution proposes to rely.
- (4) Copies of statements and confessions, if any, recorded under section 164, Criminal Procedure Code.
- (5) Statements of witnesses recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

It is undisputed that the prosecution wants to examine the six witnesses, copies of whose statements made to the Deputy Superintendent of Police Shri Surjit Singh, were asked for by the accused.

(4) The learned counsel for the Punjab State contended that no statements of these six witnesses were recorded by the Deputy Superintendent of Police under section 161(3), Criminal Procedure Code, and, therefore, the accused are not entitled to get copies of those statements under section 173(4), Criminal Procedure Code. However, he conceded that in view of the provisions of section 173(4), Criminal Procedure Code and section 207-A sub-section (3), the police officer can be directed by the Magistrate to furnish to the accused the documents referred to in section 173(4), Criminal Procedure Code. In this case, the investigation was conducted by Sub-Inspector Karnail Singh who recorded the statements of the witnesses. An application during the investigation was made to the Additional Inspector General of Police, Punjab, Chandigarh against the police of District Sangrur and this was forwarded by him to the Deputy Inspector General of Police, Patiala Range, who deputed Shri Surjit Singh, Deputy Superintendent of Police, Patiala for investigation. The said Deputy Superintendent of Police recorded the statements of nine witnesses under section 161, Criminal Procedure Code relating to Ikkatar Singh accused, who has since been discharged. He also examined six other witnesses mentioned above, but did not record their statements under section 161(3), Criminal Procedure Code, but recorded their statements in the case diary. To ascertain how Shri Surjit Singh, Deputy Superintendent of Police recorded the statements of the six witnesses, the counsel for the State of Punjab was directed to produce police diary of this case. The statement of each of these six witnesses was recorded separately by the

Deputy Superintendent of Police. The statement of Netar Singh was recorded in detail. This witness had lodged the first information report of this case and his statement recorded by the Deputy Superintendent of Police was practically what was stated by him in the first information report. As regards the statement of Major Singh P.W., the Deputy Superintendent of Police wrote that he corroborated the statement of Netar Singh P.W. and besides that, he stated certain other facts, which were recorded by him in his statement. To the same effect were the statements recorded by him of Darshan Singh P.W. and Nachhatar Singh P.W. Besides this the Deputy Superintendent of Police recorded the statement of Karnail Singh Sub-Inspector, who had conducted the investigation of this case as to whether one Mohinder Singh had come to him to lodge the report on August 21, 1972 pertaining to this occurrence. The statement of Balwant Singh, Assistant Sub-Inspector, Incharge Police Guard Rajendra Hospital, Patiala was also recorded by the Deputy Superintendent of Police as he had recorded the statement of Sucha Singh, since dead, in the Rajendra Hospital. The statements of these witnesses were recorded separately by the Deputy Superintendent of Police in the case diary.

(5) In *State vs. Sardara Singh and others* (1), it was held as under:—

“The provisions relating to recording of statement of witnesses and supplying of the copies provide a valuable safeguard to the accused so that they may be utilised at the trial for preparing effective defence. Such a request cannot be normally whittled down. Where the circumstances are such that the Court may reasonably infer that prejudice has resulted to the accused from the failure of supplying of the copies of the statements recorded under section 161, Criminal Procedure Code, the Court is justified in directing that the conviction should be set aside. The object of Sections 162, 173(4) and 207-A(3), Criminal Produce Code is to enable the accused to obtain a clear picture of the case against him. The sections impose an obligation upon the prosecution agency to supply copies of the statements of witnesses who are intended to be examined at the trial to enable the accused to utilise them in the course of cross-examination to establish such defence as may be desired to put up and also to shake

(1) 1970 Cr. L.J. 558.

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the testimony of the witnesses. If in a case statements of witnesses were first recorded by the Investigating officer and again by a senior officer, copies of both should be supplied to the accused."

To the same effect was the law laid down in *Jabid Ali and others v. Tripura Administration* (2).

(6) In *Noor Khan v. State of Rajasthan* (3), it was held as under :—

"Section 161(3) (Criminal Procedure Code) does not require a police-officer to record in writing the statements of witnesses examined by him in the course of the investigation, but if he does record in writing any such statements, he is obliged to make copies of those statements available to the accused before the commencement of proceedings in the Court so that the accused may know the details and particulars of the case against him and how the case is intended to be proved. The object of the provision is manifestly to give the accused the fullest information in the possession of the prosecution, on which the case of the State is based, and the statements made against him."

(7) In *Dadan Gazi v. Emperor* (4), it was observed :—

"Now by a curious and rather perverted ingenuity it became the practice of the police officers in the mofussil to incorporate oral statements made to them by witnesses in the Special Diary under section 172 in the belief that by so doing those statements could be kept from the knowledge of the accused.

In a series of decisions, which are too well known to require reference, it was held by this Court that such statements whether recorded in a diary under section 172 or not, fell under the provisions of section 162 and were liable

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(2) 1962(2) Cr. L.J. 590.

(3) A.I.R. 1964 S.C. 286.

(4) I.L.R. (1906) 33 Cal. 1023.

to be produced under the conditions laid down in that section. One would have imagined that the effect of these rulings would have been to put an end to the useless and irregular practice of entering any statements of witnesses in the diary under section 172 at all, and even now we think that an executive order giving effect to the law would have a salutary effect."

(8) In *Gogikari Narsoji vs. State* (5), it was held per head-note as under :—

"That by the Amendment Act II of 1945, sub-section (3) was added to section 161, Criminal Procedure Code. The new sub-section provides that the police officer may reduce into writing any statement made to him in the course of examination under this section and if he does so, he shall make a separate record of the statement of each such person whose statement he records. The word 'shall' used in the sub-section plainly shows the mandatory nature of the new provision. The result is that a police officer during the investigation is not bound to record a statement by a witness. But if he does record it in writing, he must record the statement of each witness separately. He cannot record a statement that a certain witness corroborates or agrees with the statement of another because that would be a mere opinion or impression. When the above provision is not strictly followed, the interest of the accused is prejudiced and the testimony of such witnesses must be recorded with extreme caution and the Court would be entitled in a suitable case even to ignore altogether such evidence.

The Amendment Act XVIII of 1923 substituted a new sub-section to sub-section (1) of section 163 by which the words 'whether in a police diary or not' were added; it is now clear that the statements of witnesses during investigation, even though taken down in the special diary, can be used by the accused for the purpose specified in the provision."

(5) I.L.R. 1955 Hyderabad 644.



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To the same effect was the law laid down in *Maroti Mahagoo and others vs. Emperor* (6) and *Gouranga Mohapatra v. State* (7). It was further observed in the latter ruling that the provision of subsection (3) of section 161, Criminal Procedure Code was introduced only to stop the mischief of certain investigating officer, who prepared their case diary in such a way that no assistance could be obtained either by the Court or the accused from the record.

9. In *Bejoy Chand Patra v. The State* (8), it was held per headnotes (a) and (d) as under :—

“An investigating officer is not bound to record the statements of a witness. If he does reduce statements into writing he must make a separate record of the statement of each of the persons whose statements he records. He cannot record a condensed version of the examination of all of them or a precis of what the witnesses are supposed to have said. Non-compliance with the provisions of section 161(3), however, does not make the evidence of the witnesses inadmissible though it is a matter which the Court is entitled to consider when dealing with credibility. The accused should be furnished with a copy of the gist of the statements recorded whether such can or cannot be used in cross-examination. The fact that the statements cannot be used is no ground for denying the right of the accused to these statements.”

(10) The legal position, therefore, is that section 161(3), Criminal Procedure Code, does not require a police officer to record in writing the statements of witnesses examined by him in the course of the investigation, but if he does record in writing any such statements, he must record the statement of each witness separately. If in a case statements of witnesses were first recorded by the investigating officer and again by a senior officer, copies of both statements should be supplied to the accused in view of the provisions of section 173(4), Criminal Procedure Code.

(11) However, if the police officer does not record the statements of all or some of the witnesses under section 161(3), Criminal Procedure Code, but cleverly incorporates the same in the case diary

(6) A.I.R. 1948 Nagpur 74.

(7) A.I.R. 1954 Orissa 49.

(8) A.I.R. 1950 Cal. 363.

maintained under section 172, Criminal Procedure Code in the belief that by doing so those statements can be kept back from the knowledge of the accused, then the accused cannot be deprived of the copies of those statements. The provisions of sections 162, 173(4) and 207-A(3), Criminal Procedure Code, impose an obligation upon the prosecution agency to supply copies of statements of witnesses who are intended to be examined at the trial to enable the accused to obtain a clear picture of the case against him, to utilise them in the course of cross-examination to establish his defence and also to shake the testimony of the prosecution witnesses. The words "such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record" in sub-section (1) of section 162, Criminal Procedure Code, make it abundantly clear that statements of witnesses during investigation even if taken down in the police diary maintained under section 172, Criminal Procedure Code, can be used by the accused for the purposes specified in proviso to section 162(1), Criminal Procedure Code. A very valuable right is given to the accused under the proviso to section 162(1), and he can exercise this right only if the copies of all the statements made by the witnesses during the investigation, whether recorded under section 161(3) or in the police-diary maintained under section 172, Criminal Procedure Code, are supplied to him. It follows, therefore, that the accused is entitled to the copies of statements of persons whom the prosecution proposes to examine as witnesses even though those statements are recorded in the police-diary maintained under section 172, Criminal Procedure Code.

(12) For the reasons given above, it is held that the order of the learned Sessions Judge, Sangrur is correct and the same is affirmed. There is no substance in this revision petition and the same is dismissed.

K. S. K.

MISCELLANEOUS CIVIL

*Before M. L. Verma and M. R. Sharma, JJ.*

PIARA SINGH UTTAM SINGH ETC.—*Petitioners.*

*versus*

THE STATE OF PUNJAB, ETC.—*Respondents.*

C.W. No. 426 of 1969.

March 15, 1974.

*Punjab Town Improvement Act (IV of 1922)—Sections 25, 26, 27, 36 and 42—Town Improvement scheme likely to displace resident house owners—Improvement Trust—Whether bound to frame*