

Suresh Chandra Ghose alias Barka Vs Emperor

Court: Calcutta High Court

Date of Decision: May 11, 1923

Acts Referred: Calcutta Suburban Police Act, 1866 â€” Section 47(A)

Criminal Procedure Code, 1898 (CrPC) â€” Section 172

Evidence Act, 1872 â€” Section 145

Citation: 74 Ind. Cas. 261

Hon'ble Judges: Ciming, J; C.C. Ghose, J

Bench: Division Bench

Judgement

Ciming, J.

The facts of this case are as follows. The petitioner, Suresh Chandra Ghose, was on his trial on charges under sections 324 and

326. In the course of the tri al an investigating Police Officer was examined as a witness. The accused, for the purpose, apparently, of contradicting

the witnesses for the prosecution, questioned the witness (Police Officer) with regard to certain statement made to him by the witnesses and on his

stating he did not recollect asked him to refer to his diary to refresh his memory. The witness refused to do so on the ground that it was a special

diary and had been recorded u/s 172. Upon this the defence filed a petition asking the Court, in the interests of justice, to send for the diary of

Panchanon Mukherji and to look at it and allow the defence Pleader to inspect the said diary on certain points which had been raised by the

petitioner. The Magistrate made an order on the petition rejecting it on the ground that the petitioner was not, under the law, entitled to inspect the

diary as it was a diary prepared u/s 172 of the Criminal Procedure Code. Mr. Mukherji, who appeared for the petitioner, has contended that the

diary in question comes neither u/s 162 nor u/s 172 of the Code of Criminal Procedure as it was not made under that Code. The diary, he

contends, and this point has not been disputed by Mr. Orr who appeared for Crown, was prepared u/s 47(A) of the Calcutta Suburban Police

Act (III of 1888)--the offence in question having been committed in Bhowanipur which falls within the area covered by the Suburban Police Act

and that the diary in question being prepared u/s 47(A) of the Suburban Police Act there is no question that a privilege attaches to it, that Section

172 has no application and that, therefore, the accused person would be entitled to rise those statements, recorded by the Police Officer, of

witnesses who have been examined in the case, to contradict those witnesses who had given evidence before the Magistrate u/s 145 of the

Evidence Act. Mr. Orr contended that if the accused person desired to use the document to contradict the witnesses; he should have proceeded u/s

94, Civil Procedure Code, and that he should have asked for a summons on the Police to produce the necessary document. No doubt that would

have been a correct procedure but it is quite possible that the accused or his Counsel was misled by the procedure which is usually adopted in the

matter of dealing with diaries of Police Officer under the Criminal Procedure Code. I think that the accused is entitled to see the statements of the

witnesses recorded by the Investigating Police Officer who have been examined in Court and to use them to contradict the statements made by

these witnesses under the provisions of Section 145 of the Evidence Act. The finding and sentence must be set aside and the case be sent back to

the learned Police Magistrate to pass orders after allowing the accused an opportunity of cross-examining and contradicting the statements of those

witnesses by their statements made to the Police. The trial will be resumed from that point and the Magistrate will pass orders after allowing the

accused this opportunity.

2. Pending the disposal of the case the accused will remain on the same bail as he is on now. The judgment in appeal is also necessarily set aside.

Ghose, J.

3. I agree.