

REVISIONAL CRIMINAL.

Before R. S. Narula J.

THE STATE,—*Petitioner.*

versus

RANBIR SINGH,—*Respondent.*

Reported Criminal Revision No. 160 of 1964.

Code of Criminal Procedure Act (V of 1898)—S. 173 (4)—Scheme and scope of—Statements of certain witnesses recorded under S. 164 of the Code but Prosecution not relying on them—Accused—Whether entitled to free copies of these statements.

1965

August, 13th

Held, that there appears to be a clear scheme behind section 173 (4) of the Code of Criminal Procedure, 1898. The Legislature has made it a duty of the prosecution to provide a copy of the Challan and the First Information Report to the accused free of cost irrespective of whether it wants to rely on any part of the said documents or not. The case is, however, different in respect of other categories of documents mentioned in the section. In the case of "the copies of statements recorded under section 161(3) of the Code," free copies are to be supplied to the accused only of the statements of those witnesses, whom the prosecution proposes to examine in Court at the trial. Similarly in the case of "all other documents" not covered by the previous categories, free copies are to be furnished only of such documents on which the prosecution proposes to rely. The word "including" in section 173(4) of the Code is not used in an interpretation clause and by the use of that word the scope of the category of documents preceding the use of the term is not sought to be extended but is merely sought to be clarified. Hence under section 173(4) of the Code, the accused is not entitled to free copies of statements of witnesses recorded under section 164 of the Code in case the prosecution is not relying on them.

Case reported under section 438 Cr. P. C. by Shri R. S. Bindra, Sessions Judge, Hoshiarpur, with his letter No. 265/RK, dated the 16th/18th November, 1964, for revision of the order of Shri Arjan Dass, Magistrate, 1st Class, Una, dated the 4th September, 1964, convicting the petitioner.

M. R CHHIBBAR, ADVOCATE, for the Petitioner.

A. S. ANAND, ADVOCATE AND P. S. MANN, ADVOCATE, for the
ADVOCATE-GENERAL, for the Respondent.

ORDER OF THE HIGH COURT

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NARULA, J.—During the course of committal proceedings in a case under section 302, Indian Penal Code, against Ranbir Singh, respondent, he applied to the Court of the committing Magistrate for being supplied, free of charge, copies of certain documents including the statements of some witnesses which were said to have been recorded under section 164 of the Criminal Procedure Code. An objection was taken on behalf of the State to the claim for free supply of copies of the aforesaid statements under section 164, Criminal Procedure Code, on the ground that the prosecution was not going to rely on those statements. The learned Magistrate by his order, dated 4th September, 1964, overruled the objection of the prosecution and directed supply of the copies in question free of charge under section 173(4) of the Code. Against that order, the State filed a petition for revision in the Court of the Sessions Judge, Hoshiarpur.

Shri R. S. Bindra, learned Sessions Judge, has passed an order, dated 17th October, 1964, recommending the acceptance of the revision petition by this Court. He also gave an interim direction suspending the operation of the Magistrate's order, so that the committal proceedings and the trial of the case may not be delayed. As a result of the said interim direction the trial of the case has proceeded to conviction of Ranbir Singh, accused under section 326 of the Indian Penal Code and I am informed that his appeal against the said conviction and the sentence imposed on him is now pending in this Court.

In a way, therefore, this revision petition has become infructuous in so far as Ranbir Singh, respondent, is concerned. Dr. Anand, his learned counsel, has, however, pressed the plea of the accused in this case and has insisted that the important question of law involved in this matter may be settled, as it is likely to arise in a large number of cases and every time the decision on the actual question may become unnecessary by the time the case is heard. Shri P. S. Mann has also intervened in this case and has supported Dr. Anand for the reference made by the learned Sessions Judge being refused.

The solitary question arising for consideration in this case is whether the words "on which the prosecution proposes to rely" also qualify "the statements recorded under

section 164, Criminal Procedure Code" or only qualify the category of documents described as "all other documents or relevant extracts thereof" before the word "including" in section 173(4) of the Criminal Procedure Code.

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An analysis of sub-section (4) of section 173 of the Criminal Procedure Code would show that an accused is entitled to be furnished with free copies of—

- (1) a report forwarded under section 173(1) of the Code, popularly known as the challan;
- (2) the first Information Report recorded under section 154 of the Code;
- (3) 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
- (4) the statements recorded under sub-section (v) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

This is the way in which the prosecution wants to read this section. According to the interpretation sought to be placed on the aforesaid provision of law on behalf of the accused, this section should be split up into five categories of documents, free supply of copies of which an accused person is entitled to. The additional category is carved out, according to this argument by splitting up category No. (3), into the following two categories—

- (3) all other documents or relevant extracts thereof, on which the prosecution proposes to rely—
 - (a) 'including' the statements and confessions, if any, recorded under section 164.

This is the interpretation which prevailed with the learned Magistrate. He held in this connection as follows:—

"The sentence, 'statements and confessions, if any, recorded under section 164, Criminal Procedure Code' is independent of the last line which deals with the examination of the witnesses whom the prosecution proposes to produce."

It appears that the learned Magistrate somehow lost sight of the word 'including' which connects the category of 'all

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other documents, etc.’ with the ‘statements and confessions, etc.’. The Magistrate further stated in his judgment that the reason for the conclusion arrived at by him was that if this section was interpreted in the manner in which the prosecution sought to interpret it, then the accused could never be supplied with a copy of his own confessional statement made before a Magistrate during enquiry under section 164, Criminal Procedure Code, because he is not a witness. There is a clear fallacy in this argument of the learned Magistrate. As observed by Shri R. S. Bindra, the learned Sessions Judge, the record containing such a statement of the accused would be a part of public record, copy of which the accused, can always obtain on payment of requisite fees and, in the alternative, he can summon that record and get the statement proved during the course of enquiry or trial.

It cannot be doubted that the words “including the statements, etc.” in the aforesaid provision cannot be read with “a copy of the report under section 173 (1)” or with “the First Information Report etc.”. These words can be read only with the category of documents described as the third category after a reference to the challan and the First Information Report. Nor can these words, that is “including the statements, etc.” be read with the fourth category, that is with “the statements recorded under section 161 (3) of the Criminal Procedure Code.” There appears to be a clear scheme behind this provision. The Legislature has made it a duty of the prosecution to provide a copy of the challan and the First Information Report to the accused free of cost irrespective of whether it wants to rely on any part of the said documents or not. The case is, however, different in respect of the other two categories of documents. In case of the fourth category, that is “the copies of statements recorded under section 161 (3) of the Code,” free copies are to be supplied to the accused only of the statements of those witnesses, whom the prosecution proposes to examine in Court at the trial. Similarly, in the case of “all other documents” not covered by the first two and the fourth categories, free copies are to be furnished only of such documents on which the prosecution proposes to rely.

Shri Mann has contended that the object of this section is to give the accused person an opportunity to repel the

attack which is likely to be made against him by the prosecution. There is no doubt about this intention of the provision. But this does not carry the matter any further, as in a contingency like the one prevailing in the instant case whether the prosecution does not intend to rely on the statements in question, there is going to be no attack in that behalf and there can be no question of the Court providing a machinery to the accused to repel something which is not going to be there. Shri Mann has then argued that categories Nos. (3) and (4) in the first analysis of the sub-section given above are two species of the same genus and have, therefore, to be taken together in contradistinction to the first two categories which form part of the police records. I think there are three distinct categories of documents from this point of view covered by this sub-section. The first two items that is "the challan" and the "First Information Report" constitute the first category, "the statements under section 161(3) of the Code" constitutes the second category and is qualified by the words occurring in that part of the section, and all other documents" forms the third category, and free supply of their copies is, therefore, restricted only to those documents, on which the prosecution intends to rely.

The word 'include', according to its dictionary meaning as given in "Chamber's Twentieth Century Dictionary" (1964 edition), is 'to enclose: to comprise as a part: to classify, or reckon as part: to take in.' This is the normal meaning of the word. There is no doubt, however, that when the word 'include' is used in an interpretation clause so as to bring within the category of the particular definition in that clause something which is not normally a part of that word, the intention there is to enlarge the scope of that word or article and to extend the same or add to it. This is the sense in which this word has been defined in "Stroud's Judicial Dictionary" (Volume 2), at pages 1415-16. It is there stated as follows—

" 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the

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interpretation clause declares that they shall include.....”.

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But in the same definition it is further added in the “Stroud’s Judicial Dictionary” as follows—

“But ‘include’ is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘mean and include’, and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.”

In a second definition of the word ‘include’ given at page 1416 of the “Stroud’s Judicial Dictionary”, it has been stated—

“‘include’ in section 27, Wills Act, 1837 (7 Will. 4 and 1 Vict., c. 26), is equivalent in meaning to ‘comprise’ in section 24.....”.

Reference has been invited by the learned counsel appearing on both sides to a Division Bench judgment of the Bombay High Court in *A. C. Patel v. Vishwanath Chada* (1). In that case, it was pointed out that Entry 3 in the Union List in the Constitution has made a change in Entry 2 in List I of the Government of India Act, 1935, by adding in brackets the words ‘including the control of rents’. On the basis of that change, it was argued before the Bombay High Court that the control of rents was already included in the expression ‘regulation of house accommodation’ and it was for the sake of caution and clarify that the Constituent Assembly has included the words ‘control of rents’ in the said entry in the Constitution. Their Lordships of the Bombay High Court made it clear that they were not called upon to construe Entry 3 in List I in the Constitution in that case and sounded a note of caution before the end of that judgment again that the Bench had not been called upon to do so. In that context, however, the Bombay High Court held that the word ‘including’ used in

(1) A.I.R. 1954, Bom. 294.

that particular context was in the nature of the use of that word in an interpretation clause and by the use of that term, therefore, the scope of the original expression was sought to be extended and added to. There is no quarrel with that proposition of law. The word 'including' in section 173(4) of the Code of Criminal Procedure is not used in an interpretation clause and by the use of that word the scope of the category preceding the use of that term is not sought to be extended but is merely sought to be clarified. There can be no doubt that the phrase 'all other documents' would include, even without being so specified, 'statements recorded under section 164 of the Code.' The added words in question have, therefore, been planted in that part of the section by way of abundant caution. It has been argued by Shri Mann that the very fact that the Legislature thought it fit to add these words in spite of the fact that even if these words were not used 'all other documents' would have included these documents, shows that a definitely separate category was sought to be coined out. There is no force in this argument. The clarification has been made by way of abundant caution to meet an argument of the type that has been advanced before me that 'all other documents' has to be read as *ejusdem generis* with the challan, the F.I.R., etc., and is intended to relate to police records and not to statements in Court. Be that as it may, it is not for this Court to adjudicate about the intention and object of the Legislature in making this provision. If the words in the statute are clear, they have to be interpreted in the only possible way in which they can be read. Rules of construction have to be invoked only in case of ambiguity. There is no ambiguity here.

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Even if the word 'including' is equated to 'and' in section 173(4) of the Code, the qualifying words in the third category of cases would equally apply to the additional clause.

In these circumstances, I accept the recommendation of the learned Sessions Judge for the reasons recorded by him as well as for the reasons given above and accepting the revision petition, I set aside the order of the learned Magistrate, First Class, Una, dated 4th September, 1964, and hold that under section 173(4), Criminal Procedure Code, the accused was not entitled to free copies of statements

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APPELLATE CIVIL

Before Inder Dev Dua and P. C. Pandit, JJ.

RAJINDER SINGH AND OTHERS,—*Appellants.*

versus

LAKHA SINGH AND OTHERS,—*Respondents.*

Regular First Appeal No. 170 of 1958.

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August, 25th

Land Acquisition Act (1 of 1894)—S. 23—Land-owned jointly by various co-owners acquired by the Government—Land not partitioned but co-owners in possession of various holdings although not in accordance with their shares in the land—Compensation amount—How to be distributed—Whether in accordance with their shares in the joint land or on the basis of their actual possessions on the date of the acquisition.

Held, that where the joint land owned by various co-owners which has not been partitioned but the co-owners are in possession of various holdings though not in accordance with the shares they hold therein, is acquired by the Government, the compensation amount in respect thereof has to be awarded in accordance with the title of each landholder in the joint land acquired, irrespective of the fact whether they are in actual possession of more or less area on the date of acquisition. The reason is that one co-sharer in possession of a joint land holds the same on behalf of all the co-shares. His possession for howsoever a long period cannot make him an exclusive owner of the land held by him, unless he sets up a hostile title by some overt act to the knowledge of the other co-sharers and the latter do not take any action within limitation from that date. His possession over joint land is always considered to be permissive till partition takes place, when he would be entitled to the area in proportion to his actual share in the joint land. The fact that before partition he was allowed by the other co-sharers to occupy more area than the one to which he was actually entitled, would not make him an owner of the excess area and thus he would not be entitled to more compensation on the basis of his possession alone.

Regular First Appeal from the order of the Court of Shri Murari Lal Puri, District Judge, Kapurthala, dated 23rd January, 1958, partly