1956 *Present:* **Weerasooriya, J., and H. N. G. Fernando, J.**

BUDDHADASA, Petitioner, *and* A. MAHENDRAN (Officer-in-Charge, Police Station, Matara), Respondent

S. C. 315—Application for a Writ of Mandamus

Information Book—Statements of persons recorded therein—Their evidentiary value in civil proceedings—Right of a litigant to obtain copies of them—"Public documents"—"Right to inspect"—Proof of Public Documents Ordinance, s. 3—Evidence Ordinance, ss. 74, 76, 100—Criminal Procedure Code, ss. 121 (1), 122— Mandamus.

A party to an action is not entitled to resort to section 3 of the Proof of Public Documents Ordinance in order to obtain certified copies of statements taken down in an Information Book in terms of sections 121 (1) and 122 (1) of the Criminal Procedure Code unless he can show that at the trial of the action it will be necessary for him to adduce proof of the contents of those statements.

A statement reduced into writing by a police officer in terms of section 122 (1) of the Criminal Procedure Code is not a statement of the witness, a record of which it purports to be, but is the statement of the police officer as to what the witness told him. Therefore, a certified copy of such a statement cannot be used in civil proceedings either to corroborate or to contradict the witness whose statement it purports to be.

A first information recorded in terms of section 121 (1) of the Criminal Procedure Code is of little or no value if the informant, after having access to the statement and becoming aware of its contents, seeks to use it to corroborate his own evidence.

Semble: In the absence of specific statutory provision, a person is not entitled to inspect a public document and to be furnished with a certified copy of it. The documents which a person "has a right to inspect" within the meaning of section 76 of the Evidence Ordinance are only those in respect of which the right of inspection is expressly conferred by enactment.

The Attorney-General v. Geetin Singho (1956) 57 N. L. R. 289, dissented from.

APPLICATION for a Writ of *Mandamus*.

A collision took place between a motor car driven by A and a motor-cycle ridden by B in consequence of which B received injuries. The accident was reported to the police by A on the same day and his statement was recorded by a police constable in terms of section 121 of the Criminal Procedure Code. Thereafter, a police sergeant conducted an investigation into the cause of the accident in the course of which he recorded the statement of B at the hospital and also the statement of a person, C, at the scene of the incident. Subsequently B filed an action suing A in a sum of Rs. 50,000 as damages for the injuries sustained by him. Pending the trial, A made the present application to the Supreme Court praying for a writ of *Mandamus* on the officer in charge of the Police Station requiring him, in terms of section 3 of the Proof of Public Documents Ordinance, to issue to him a copy of the statement made by A at the Police Station and also copies of the statements of B and C as recorded by the Police in the course of their investigation into the accident.

Walter Jayawardene, with *A. S. Vanigasooriyar*, for the petitioner.

D. St. C. B. Jansze, Q.C., Solicitor-General, with *L. B. T. Premaratne*, Crown Counsel, and *V. S. A. Pullenayegum*, Crown Counsel, for the respondent.

Cur. adv. vult.

August 9, 1956. WEERASOORIYA, J.—

On the 7th December, 1953, a collision took place at a junction of two roads within the town limits of Matara between a motor car driven by the petitioner and a motor-cycle ridden by one N. G. A. Samarasekera in consequence of which the latter received injuries. The accident was reported at the Matara Police Station by the petitioner on the same day and his statement was recorded by Police Constable Weeratunge who was on duty at the station. Thereafter Police Sergeant Pathmanathan conducted an investigation into the cause of the accident in the course of which he recorded the statement of Samarasekera at the Matara Civil Hospital and also the statement of one Don Austin Ambepitiya at the scene of the accident. Subsequently the petitioner was charged by the Matara Police with the commission of offences punishable under the Motor Traffic Act, No. 14 of 1951. One of the offences charged was based on the allegation that he drove the car on the highway negligently or without reasonable consideration for other persons using the highway and thereby caused grievous hurt to Samarasekera. After trial the petitioner was acquitted of the charges preferred against him. Samarasekera then filed an action in the District Court of Matara suing the petitioner in a sum of Rs. 50,000 as damages for the injuries sustained by him. The petitioner has filed answer denying liability and the trial is pending.

The petitioner states that for the purpose of his defence in that action it is necessary for him to obtain certified copies of the entries in the Information Book kept at the Matara Police Station relating to the accident. In an attempt to obtain these copies his lawyers wrote a letter to the respondent, who is the officer in charge of the Matara Police Station, requesting that they be furnished with the copies under Section 3 of the Proof of Public Documents Ordinance (Cap. 12) on payment of the prescribed fees. The respondent replied that the copies applied for could not be issued but that on receipt of summons from Court the officer who conducted the investigation and recorded statements would give evidence relating thereto, " subject to the claim of privilege ".

The present application is made by the petitioner to enforce by a writ of mandamus the issue to him of the copies referred to. At the hearing before us Mr. Jayawardene who appeared for the petitioner stated that the only copies required are of the statement made by the petitioner at the Matara Police Station (being the first information received by the Police regarding the accident) and the statements of Samarasekera and Ambepitiya as recorded by the Matara Police in the course of their investigation into the accident. The Acting Solicitor-General appearing for the respondent opposes this application.

It was held in the case of *The Attorney General v. Geetin Singho* [1] that a first information relating to the commission of a cognizable offence which is recorded in the Information Book is a public document within the meaning of Section 74 (*a*) (iii) of the Evidence Ordinance and that an accused person who is subsequently charged with the commission of an offence disclosed in that information is entitled under Section 76 of the same Ordinance to be furnished with a certified copy of it on payment of the prescribed fees. Section 76 refers to a public document in the custody of a public officer *which a person has a right to inspect*, and the view expressed by the Bench of two Judges of this Court which decided that case was that, adopting the English common law right of inspection of public documents as stated in *Mutter v. Eastern and Midlands Railway Company* [2], the accused concerned had made out a right to inspect the public document in question by reason of the interest which he had in it as the accused in the case. In holding that the first information was a public document the same Bench dissented from what appears to be a contrary view expressed by the majority of the four Judges of the Madras High Court (constituting a Full Bench) who heard the case of *Queen Empress v. Arumugam* [3] where that view was reached on a consideration of certain provisions in the Indian Criminal Procedure Code analogous to the provisions contained in Chapter XII of our Criminal Procedure Code.

It would follow from the ruling in *The Attorney-General v. Geetin Singho* (*supra*) that an accused person is also entitled to be furnished with copies of any statement relating to the matter of the charge against him and recorded by a Magistrate under Chapter XIII of the Criminal Procedure Code even where the statement has been made by the accused himself and amounts to a confession. But it is to be noted that while under Section 165D of the same Code an accused who is committed for trial is entitled to be furnished with a copy of the proceedings of the non-summary inquiry on payment of the prescribed fees, and Section 434 of the Code gives a similar right to any person affected by a judgment or final order of a criminal court of obtaining a copy of the proceedings in which the judgment or order was given, there is no specific provision in the Code for an accused or other person being furnished with copies of statements recorded under Chapter XIII of it. In the case of *Emperor v. Swamiyar* [4] the question that arose was whether an accused person was entitled, before the commencement of the preliminary inquiry against him, to copies of statements of witnesses recorded by a Magistrate under Section 164 of the Indian Criminal Procedure Code, which is the counter-part of Section 134 (in Chapter XIII) of our Code, and it was held that he had no such right. The judgment contains a reference to the English case of *Mutter v. Eastern and Midlands Railway Company* (*supra*) and the view was expressed that the question whether any person has a right to inspect a public document on the ground of interest is one not dealt with by the Indian Evidence Act and is altogether outside its scope. This is a decision of a Bench of two Judges of the Madras High Court, one of whom was Benson, J., who also was a member of the Bench which heard the

[1] *(1956) 57 N. L. R. 289.*
[2] *(1888) 38 Chancery Division 92.*
[3] *(1897) I. L. R. 20 Madras 189.*
[4] *(1907) I. L. R. 30 Madras 466.*

case of *Queen Empress v. Arumugam* (*supra*) and concurred in the majority decision in that case. But it must also be stated that Chitaley and Annaji Rao in their commentary on the Indian Criminal Procedure Code [1] refer to certain decisions of the Lahore and Allahabad Courts as supporting their opinion that statements recorded under Section 164 " are public documents, being the acts of a judicial officer done under the provisions of the Code and the public servant, in whose custody those documents are, is bound to issue copies thereof and allow inspection of the same by the accused person ". There is, therefore, a difference of judicial opinion in the decisions of the Indian Courts whether, in the absence of specific statutory provision, a person has a right to inspect a public document and to be furnished with a certified copy of it.

The Evidence Ordinance contains no provision giving any right to inspect a public document, but Section 100 provides that whenever in a judicial proceeding *a question of evidence* arises not provided for by that Ordinance or by any other law in force in the Island, such question shall be determined in accordance with the English Law of evidence for the time being. The decision in *The Attorney-General v. Geetin Singho* (*supra*) that the accused person in that case was entitled to inspect the first information appears to have proceeded on the basis that where there is no specific statutory provision conferring a right of inspection of a public document the rule of English common law as stated in *Mutter v. Eastern and Midlands Railway Company* (*supra*) may be invoked under Section 100 of the Evidence Ordinance, but, with all respect, it seems to me that a claim that a person has a right to inspect a public document does not raise a question of evidence and the matter is not one, therefore, which is governed by Section 100 of the Evidence Ordinance. This is the view that was taken in *Emperor v. Swamiyar* (*supra*). Moreover, unlike in our Evidence Ordinance, there is no statutory definition of a public document in English law. But what is meant by a public document under the common law of England was considered by the House of Lords in *Sturla v. Freecia* [2] where Lord Blackburn stated that the very object of such a document must be that it should be made " for the purpose of being kept public, so that the persons concerned in it may have access to it ".

In *Ilcyne v. Fischel and Company* [3] it was held that documents made by officers of the Post Office showing the times of receipt and delivery of telegrams were not public records as they were kept for administrative purposes and not for the information of the public. Again, in *Pettit v. Lilley* [4] it was held that regimental records were not public documents because neither had the public access to them nor were they kept for the use and information of the public. Goddard, L.C.J., also referred in his judgment in that case to the well-settled rule that public documents are admissible as *prima facie* evidence of the facts stated in them. It would seem, however, that the documents considered in these two cases would fall within the category of public documents as defined in Section 74 of our Evidence Ordinance.

[1] *(1935 ed.) 834.*
[2] *(1880) 5 Appeal Cases 623 at 643.*
[3] *30 T. L. R. 190.*
[4] *(1946) 1 A. E. R. 593.*

The conception of a public document in English law and our law is, therefore, fundamentally different, and in determining whether under our law a person has a right of inspection of a public document it would, in the absence of statutory provision conferring such a right, be unsafe to adopt the criterion of the English common law, as stated in *Mutter v. Eastern and Midlands Railway Company* (*supra*), that it depends on the interest which the applicant has in what he wants to inspect. Moreover, we have not been referred to any decision of the English Courts setting out the nature and extent of the interest which, under English law, would entitle a person to inspect a public document. In *The King v. Clear* [1], even where a statutory right was conferred on the inhabitants of a parish, who had been assessed for the purposes of payment of poor relief, to inspect at all reasonable times the accounts of the churchwardens and overseers relating to disbursements of poor relief, a writ of mandamus to enable inspection of the documents by an assessee was refused by the Court as no special ground had been made out as to why inspection was required. In *Ex parte Briggs* [2] it was held that a ratepayer had not made out a case for the issue of a writ of mandamus to compel inspection by him of the books of accounts kept by the churchwardens of a parish in the absence of some special and public ground. In both these cases the documents the inspection of which was refused would appear to have been public documents as understood in English law and the persons applying to inspect them had undeniably some interest in them, but such interest as they were shown to have was held not to be sufficient for the issue of the writ.

In the present case too the petitioner would appear to have an interest in the statements in question, but Mr. Jayawardene conceded that such interest alone would not entitle the petitioner to the issue of the certified copies applied for. But he submitted that the respondent, who is the public officer having custody of the Information Book of the Matara Police Station, is under a legal duty, in terms of Section 3 of the Proof of Public Documents Ordinance, to issue to the petitioner certified copies of his statement and the statements of Samarasekera and Ambepitiya appearing in the Information Book on payment of the prescribed fees. It was also conceded by Mr. Jayawardene that Section 3 of that Ordinance does not refer to all books and documents in the custody of a public officer but only to those books and documents the contents of which it shall be necessary for a person to adduce proof of in a Court of Justice or before any person having authority to hear, receive and examine evidence.

The basis of the present application is, therefore, different from that in the case of *The Attorney-General v. Geetin Singho* (*supra*) where the document was sought to be obtained under Section 76 of the Evidence Ordinance. In order to succeed in this application the petitioner has to satisfy the Court that at the trial of the civil action it will be necessary for him to adduce proof of the contents of the statements of himself, Samarasekera and Ambepitiya as appearing in the Information Book.

In *Rex v. Jinadasa* [3] the Court of Criminal Appeal held that Section 122 (3) of the Criminal Procedure Code imposes restrictions on the use

[1] *4 B and C 897.*

[2] *(1859) 28 L. J. Q. B. 272.*

[3] *(1950) 51 N. L. R. 529.*

of the police officer or inquirer's *record* of the oral statement made to him, but does not govern the admissibility of *oral evidence* of such statement, and that, accordingly, where the law otherwise permits such evidence to be given a police officer or inquirer may give oral evidence of a statement made to him under Section 122 (1) and for that purpose he may refresh his memory by reference to his record of that statement, which record may also be used to contradict him. The effect of that decision (if I have understood it correctly) is that a statement reduced into writing by a police officer or inquirer in terms of Section 122 (1) of the Criminal Procedure Code is not a statement of the witness a record of which it purports to be, but is the statement of the police officer or inquirer himself as to what the witness told him. Although, if I may say so with respect, I find it difficult to appreciate the distinction, that decision is one which is binding on us. It would follow, therefore, from that decision that, quite apart from the restriction imposed by Section 122 (3) of the Criminal Procedure Code on the use of that statement in criminal proceedings, such a statement cannot be used even in civil proceedings either to corroborate or to contradict the witness whose statement it purports to be.

The present application was argued before us by learned counsel appearing for both sides on the footing that the statements in question related to the commission of a cognizable offence. Although the charges laid against the petitioner in the criminal prosecution against him were in respect of offences alleged to have been committed in breach of certain provisions of the Motor Traffic Act, No. 14 of 1951 (which are not cognizable offences), it is possible that on receiving information from the petitioner regarding the accident the Matara Police considered themselves under a duty to investigate whether any offence under Section 328 of the Penal Code (which is a cognizable offence) had been committed.

The ruling in *Rex v. Jinadasa* (*supra*) would, however, not apply to a first information relating to a cognizable offence recorded in terms of Section 121 of the Criminal Procedure Code, and such a statement could be utilised in civil or criminal proceedings either to corroborate or contradict the witness giving that information should he be called to testify in those proceedings. In the letter written by the petitioner's lawyers to the respondent applying for copies of the statements the reason given for the application was that the copies were needed " to contradict the witnesses in case their evidence deviates from their statements made under Section 122 " (of the Criminal Procedure Code). But I do not see how, if the petitioner gives evidence in the civil action, he can utilise his first information to contradict his own evidence. Nor is it likely that it would be utilised by him for such a purpose even if the law permitted it. Mr. Jayawardene contended, however, that it could be used to corroborate his evidence. This contention I am unable to accept since the statement can have little or no corroborative value if prior to the petitioner giving evidence he has had access to the statement and became aware of its contents.

As regards the other two statements, applying the ruling in *Rex v. Jinadasa* (*supra*), they may be made use of in the civil action only for the purpose of contradicting the police officer who reduced them into writing or to refresh his memory, but they cannot be used to contradict

the evidence of either Samarasekera or Ambepitiya. On reference to the record of the civil action I find that Police Sergeant Pathmanathan, who recorded these statements, has been cited as a witness by the petitioner. But at the present stage of the action the need to contradict this officer if he is called as a witness at the trial can be regarded as only exceedingly remote. Should, however, it become necessary to do so or should the police officer wish to refer to the statements in order to refresh his memory, I do not see that the petitioner will be unduly hampered by not having access to the contents of those statements at present since the respondent has also been cited by the petitioner to produce at the trial the Information Book containing those statements which will, therefore, be available to the petitioner at the proper time for any purpose for which they may legally be used.

It seems to me that the real object of the application is to enable the petitioner to ascertain before the trial commences what statement was made by him to the Police when he reported the accident and also what statements were made by Samarasekera and Ambepitiya in that connection. There is nothing in Section 3 of the Proof of Public Documents Ordinance which confers a right on the petitioner to obtain certified copies of the statements in order to achieve such an object.

If this application is allowed, the knowledge derived by the petitioner of the contents of the statements made by Samarasekera and Ambepitiya (or, at least, of Police Sergeant Pathmanathan's version of what these two persons told him when questioned regarding the accident) would place him at an advantage which normally is not afforded to a party to an action. Samarasekera is the plaintiff in the action and Ambepitiya has been cited as a witness for the plaintiff, and in all probability they will be called at the trial on plaintiff's behalf to testify against the petitioner. In *Rambukwelle v. de Silva* [1] the observation was made by Bertram, C.J., that it is not proper that persons who have been, or are likely to be, sub-poenaed by one side should be got by the other side to make statements or to sign prepared statements. Although that case was a proceeding questioning the validity of an election, the observation is equally applicable to any other civil proceeding.

In my opinion the application is devoid of any merit and must be dismissed. The petitioner will pay to the Crown the costs of these proceedings which are fixed at Rs. 525.

H. N. G. FERNANDO, J.—

I have had the advantage of reading the judgment of my brother Weerasooriya and am in entire agreement with the conclusion he has reached.

Although the application for certified copies was made in this case in terms of section 3 of the Proof of Public Documents Ordinance, I should myself have seen no objection to directing that the copies should be furnished under section 76 of the Evidence Ordinance if resort could properly have been had to the latter section. In my opinion, however,

[1] *(1924) 26 N. L. R. 231 at 254.*

the documents which a person "has a right to inspect" are only those in respect of which the right of inspection is expressly conferred by enactment. Having regard to the existence of numerous enactments in which the Legislature has chosen with deliberation to confer such a right, it would be unreasonable to suppose that the Legislature intended by section 76 to add to the list of instances in which such a right could be claimed. If the expression "right to inspect", occurring in section 76, had had no meaning in our law owing to the lack of statutory provision there might well have been scope for the admission of English Law under section 100 to fill the place of the *casus omissus*. But the existence of ample statutory provision conferring the right to inspect public documents contradicts the view that there is here any question of a *casus omissus*.

I should like to add also that section 3 of the Proof of Public Documents Ordinance is a provision which seems only *incidental* to the purpose of that Ordinance, which is set out in the Long Title and in the Preamble (stated in the original enactment) as follows :—

"An Ordinance to provide for the production in evidence of copies, instead of originals, of public documents".

"Whereas much inconvenience is experienced from the practice, which is now common, of summoning Public Officers to produce in Evidence, books and documents in their custody : It is hereby enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows : . . . . ."

Having regard to these declarations of the Legislature as to the object of the enactment, there is in my opinion much force in the argument of the learned Solicitor-General that section 3 only requires a public officer, on application made by a party to any legal proceedings, to furnish *to the Court* a copy of a public document, instead of producing the original in evidence. To hold otherwise would be to hold that the Legislature, having elsewhere made specific provision for the right of inspection and for the right to obtain certified copies, intended in section 3 to confer a general right of access to information contained in public records merely because of the pendency of legal proceedings.

Application dismissed.