1956 *Present :* K. D. de Silva, J., and Sansoni, J.

THE ATTORNEY-GENERAL, Petitioner, *and* K. GEETIN SINGHO, Respondent

S. C. 496—Application in revision in M. C. Nuwara Eliya, 11,588

Information Book—Statement of a complainant recorded therein—Right of accused to obtain certified copy of it—"Public document"—"Right of inspection"—Evidence Ordinance, ss. 74, 76, 123, 124, 125—Criminal Procedure Code, ss. 121 (1), 122—Proof of Public Documents Ordinance, ss. 2, 3.

An accused person is entitled to obtain a certified copy of a first complaint recorded by the Police under the provisions of section 121 (1) of the Criminal Procedure Code. The entry in the Information Book relating to the first complaint is a public document, which the accused has a right to inspect; subject, therefore, to any claim of privilege under sections 123, 124 and 125 of the Evidence Ordinance, the accused is entitled to obtain a certified copy of such entry under sections 74 and 76 of the Evidence Ordinance.

Quaere, (i) whether the accused is entitled to the same right under sections 2 and 3 of the Proof of Public Documents Ordinance.

(ii) whether a Magistrate has jurisdiction to order the Police to issue a certified copy.

APPLICATION to revise an order of the Magistrate's Court, Nuwara Eliya.

Douglas Jansze, Acting Solicitor-General, with *L. B. T. Premaratne*, Crown Counsel, for the petitioner.

H. W. Jayewardene, Q.C., with *A. C. M. Uvais*, for the accused respondent.

Cur. adv. vult.

February 15, 1956. DE SILVA, J.—

This is an application by the Attorney-General to revise an order made on September 16, 1955, by the Magistrate, Nuwara Eliya, on a motion filed on behalf of the respondent to obtain a certified copy of the 1st complaint or 1st information made to the Police in this case. A. A. Saraph, police sergeant, officer-in-charge, Punduluoya Police Station, who is the complainant made a report to Court in terms of Section 148

2——J. N. B 53792-1,592 (3/56)

(1) (*b*) on July 20, 1955, that the respondent did on July 17, 1955, cause hurt to one Sirisena with a sharp cutting instrument, an offence punishable under Section 315 of the Penal Code. On the same day the respondent on being charged with the offence pleaded not guilty and the case was fixed for trial on 18.8.'55, and later trial was refixed for 15.9.'55. On 3.9.'55 the respondent's proctor made a written application to the Assistant Superintendent of Police, Nuwara Eliya, for a certified copy of the 1st complaint. On the same day he also filed a motion in Court requesting that the Assistant Superintendent of Police be ordered to issue a certified copy of the 1st complaint. On this motion the learned Magistrate noticed the Assistant Superintendent of Police, "to show any reason why the application should not be granted". The matter came up for consideration on 15.9.'55 when Mr. N. D. T. Kanakaratne Crown Counsel who appeared for the Assistant Superintendent of Police opposed the application. The arguments urged by the learned Crown Counsel and the proctor who appeared for the respondent have not been recorded in detail. The respondent's proctor took up the position that the Information Book was a public document within the meaning of Section 74 of the Evidence Ordinance. The learned Crown Counsel conceded this but appears to have taken up the position that the Information Book was not a document which the respondent had a right to inspect and that therefore he was not entitled to obtain a certified copy of an entry in it. The learned Magistrate in his order has referred to this argument. He has stated that the prosecution argued that the defence had no right to inspect the Information Book except under the conditions mentioned in Section 122 of the Criminal Procedure Code. The learned Magistrate while conceding that the defence was not entitled to obtain certified copies of statements recorded under Section 122 (1) of the Criminal Procedure Code except for the purposes set out in sub-section 3 of that Section expressed the view that a first complaint recorded by the Police is not one which falls within the ambit of Section 122 (1). He also agreed, but subject to qualification, with the admission made by both parties that the Information Book was a public document. Then having commented on the fact that the prosecution had failed to establish under what provision of law a certified copy of the 1st complaint could be withheld from the defence he proceeded to make the following order :—

> "I hold therefore that the defence is entitled to a certified copy or a perusal of the 1st statement or information recorded in the Information Book. I consider that the prosecution cannot be heard to say that it can claim the privilege with regard to the issue of a certified copy of the 1st statement or its perusal by the defence."

It is this order that the Attorney-General asks this Court to revise. At the hearing of this application the learned Solicitor-General raised as a preliminary objection the proposition that the learned Magistrate had no jurisdiction to make the order in question. He submitted that the Magistrate had no power to order the Assistant Superintendent of Police to issue a certified copy of the 1st complaint and that the proper procedure that the Court should have followed was to summon the Assistant Superintendent of Police to produce the document in terms of Section

66 (1) of the Criminal Procedure Code. Mr. Jayawardene replied that the learned Solicitor-General was not entitled to raise this point as it was not taken either in the Court below or in the petition filed in this Court. I agree with the submission made by Mr. Jayawardene. It is clear from the proceedings that both parties invited the Magistrate to decide whether or not the defence was entitled to obtain a certified copy of the 1st complaint. That was on the assumption that the Magistrate had the power to decide that question. The petition in revision is signed on behalf of the Attorney-General by the same Crown Counsel who argued the matter before the Magistrate. If an objection to the Magistrate's jurisdiction to decide the question had been taken in the Court below it is most likely that reference to it would have been made in this petition. After inviting the Magistrate to decide the particular question, thereby implying that he had the power to decide it, the Crown is not entitled now to question his jurisdiction. Apart from that the learned Magistate has not issued an order on the Assistant Superintendent of Police to issue a certified copy. He merely held that the defence was entitled to obtain such a copy. I would therefore deal with this application on the basis that the Magistrate had the power to make the order in question. The learned Magistrate's observation that a 1st complaint does not fall within the category of statements recorded under Section 122 (1) correctly sets out the position and cannot be questioned. The prohibition set out in Section 122 (3) of the Criminal Procedure Code against the use of statements recorded during the course of the investigation except for the limited purposes set out in that sub-section applies only to statements recorded under Section 122 (1); but different considerations would apply to a first complaint which is recorded under the provisions of Section 121 (1). In *Rex v. Jinadasa* [1] Dias S. P. J. commented on these two sections and proceeded to state :—

> "It is common ground that a 1st information or 1st complaint under Section 121, provided it is otherwise relevant and admissible, can be used as substantive evidence or for evidentiary purposes, e.g., to corroborate the evidence of the informant, &c. ".

The Sections in the Indian Code of Criminal Procedure which correspond to our Sections 121 and 122 are 154 and 162 respectively. In the case of *Azimaddy v. Emperor* [2] Rankin J. considered Sections 154 and 162 and observed :—

> "The 1st information report against the accused is clearly not a statement within the contemplation of Section 162 because it is not made in the course of an investigation. "

It is therefore clear that a statement under Section 121 (1) cannot be shut out under the provisions of Section 122 (3) as it appears to have been contended by the Crown Counsel before the Magistrate. However, I am not in agreement with the further observation of the learned Magistrate that the prosecution is not entitled to set up a claim of privilege in regard to the issue of a certified copy of the 1st statement or its perusal

[1] *51 N. L. R. 529.* [2] *(1927) A. I. R. (Calcutta) 17.*

by the defence. In my view in the matter of issuing certified copies the provisions of Section 123, 124 and 125 of the Evidence Ordinance cannot be ignored but must be given effect to.

Mr. Jayawardene who appeared for the respondent contended that the entry in the Information Book relating to the 1st complaint is a public document and that the defence is entitled to obtain a certified copy of such entry under Sections 74 and 76 of the Evidence Ordinance as well as under Sections 2 and 3 of the Proof of Public Documents Ordinance (Cap. 12).

Section 121 (1) of the Criminal Procedure Code provides, *inter alia*, that every information relating to the commission of a cognizable offence if given orally to the officer-in-charge of a Police Station or to an inquirer shall be reduced to writing by him or under his direction and every such information, whether given in writing or reduced to writing as aforesaid shall be entered in the "Information Book" prescribed for the purpose. Mr. Jayawardene argues that this entry in the Information Book is a public document within the meaning of Section 74 of the Evidence Ordinance which reads thus—

> The following documents are public documents :—
>
> (*a*) documents forming the acts, or records of acts—
>
> (i) of the Sovereign authority ;
>
> (ii) of official bodies and tribunals ; and
>
> (iii) of public officers, legislative, judicial and executive, whether of the Island or of any other part of His Majesty's dominions, or of a foreign country ;
>
> (*b*) public records, kept in the Island, of private documents ;
>
> (*c*) plans, surveys, or maps purporting to be signed by the Surveyor-General or officer acting on his behalf. "

The submission made by Mr. Jayawardene is that an entry in the Information Book made in terms of Section 121 (1) of the Criminal Procedure Code is an act or the record of an act of the public officer and falls within Section 74 (*a*) (iii). The learned Solicitor-General strongly opposes this view. Section 76 of the Evidence Ordinance reads as follows :—

> "Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies. "

This Section makes it clear that a person is not entitled to obtain as a matter of right a certified copy of every public document. He is entitled thereunder to obtain certified copies of only those public documents which he has a right to inspect. The two questions which come up for consideration therefore are :—

(1) Is the entry recorded in the Information Book under Section 121 (1) of the Criminal Procedure Code a public document ?

(2) If so, is the party against whom such information is given entitled to inspect such entry ?

According to the Solicitor-General the answer to the 1st question must be in the negative and the 2nd question would not therefore arise. He relied on certain English and Indian authorities in support of his contention. One of these is *Sturla v. Freccia* [1] decided by the House of Lords. In that case Lord Blackburn stated :—

" I understand a public document there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi-judicial, duty to inquire, as might be said to be the case with the bishop acting under the writs issued by the Crown. That may be said to be quasi-judicial. He is acting for the public when that is done; but I think the very object of it 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 afterwards. "

The document which came up for consideration in that case was a report of a committee appointed by a public department in the State of Genoa and acted upon by that State. This view was followed by the Privy Council in *Ioannou v. Demetriou* [2]. In *Heyne v. Fischel* [3], Pickford J. held that documents kept by the Post Office showing the times of the receipt and delivery of telegrams were not admissible in evidence as public records for the reasons that they are kept only for a short time, are not accessible to the public are not the result of a public inquiry and do not deal with a general public right but are merely kept for the purpose of regulating the pay and the work of Post Office servants. In *Pettit v. Lilley* [4] it was held that regimental records were not public documents because the public had no access to them and were not kept for the use and information of the public. On the analogy of these cases the learned Solicitor-General argued that the Information Book is not a public document. I am unable to agree with that view. These English cases are not of much assistance in deciding the question as to whether or not this particular document is a public document according to the law of this country. In England there is no statutory law which defines or classifies " public documents ". In this country it is otherwise. Section 74 of the Evidence Ordinance sets out exhaustively the documents which fall within the category of public documents. Section 75 states that all

[1] *(1880) 5 Appeal Cases 623.*
[2] *(1952) 1 A. E. R. 179.*
[3] *30 T. L. R. 190.*
[4] *(1946) 1 A. E. R. 593.*

other documents are private. The category of documents included in Section 74 is much wider than the class of documents treated as public documents in England. According to Section 74 (*a*) (3) documents forming the acts or records of acts of public officers, among others are public documents. But that does not mean that a person is entitled to obtain certified copies of all such documents. Before he can insist on obtaining a certified copy he must establish a right to inspect it. It is so provided by Section 76. There is no provision in the Evidence Ordinance or any other law which defines the right of inspection. There are of course Ordinances which expressly confer a right on certain persons to obtain certified copies of particular documents. Two such Ordinances are the Registration of Births and Deaths Ordinance and the Companies Ordinance. But there is no such provision in our Criminal Procedure Code in regard to entries in the Information Book. In the matter of right of inspection the English law, however, is of considerable assistance. The right of inspection and obtaining certified copies was considered in *Mutter v. Eastern and Midlands Railway Company* [1]. In that case Lindley J. made the following observations :—

> " When the right to inspect and take a copy is expressly conferred by a statute the limit of the right depends on the true construction of the statute. When the right to inspect and take a copy is not expressly conferred the extent of such right depends on the interest which the applicant has in what he wants to copy and what is reasonably necessary for his protection of such interest. The common law right to inspect and take copies of such public documents is limited by this principle. "

There is no provision in the Criminal Procedure Code which confers a right on the defence to obtain a certified copy of the 1st information. Nor is there any provision in it which states that the defence is not entitled to use such information, although, in Section 122 (3) there is a specific prohibition against the use by the defence of statements recorded under Section 122 (1) except in the circumstances set out therein. The presence of such a prohibition in respect of statements recorded under Section 122 (1) and the absence of it in respect of 1st informations support the view that the use of 1st informations by the defence is legally permissible.

Has the accused person an interest in the first information given to the Police in regard to the commission of a cognizable offence ? There can be only one answer to that question and it must be in the affirmative. The first information is vitally necessary for the preparation of the defence. It would show the development of the prosecution case from step to step and additions to and deviations from the original story, if any, would stand revealed. When the prosecution is entitled to avail itself of the first information untrammelled by the restrictions which statements recorded under Section 122 (1) are subject to it stands to reason that the defence too should have the same right subject, of course, to any claim of privilege. Therefore adopting the principle laid down

[1] *(1888) 38 Chancery Division 92.*

by Lindley L.J. in the case referred to earlier the defence is entitled to inspect and obtain a copy of the 1st information if it is a public document and is unprotected by special privilege. It was so held by a Full Bench of the Madras High Court in *Queen Empress v. Arumugam* [1] in respect of reports made under Sections 157, 168 and 173 of the Indian Code of Criminal Procedure which are analogous to our Sections 121 (2), 125 and 131 respectively. This is a case relied on by the Solicitor-General and I would have occasion to refer to it at a later stage.

Now I would proceed to consider the question whether an entry in an Information Book relating to the first information is a public document. This entry was made by a Police Officer who is undoubtedly a public officer. He did so in pursuance of the provisions of Section 121 (1) of the Criminal Procedure Code which requires such information to be recorded in the Information Book. Mr. Jayawardene contends that such an entry when made is a document forming the act or the record of an act of a public officer. The Solicitor-General maintains that it is neither. According to him an act in the context of Section 74 of the Evidence Ordinance means a completed act. In support of that view he relies on *Queen Empress v. Arumugam* referred to earlier. In that case the question whether reports made under Sections 157 and 168 of the Indian Criminal Procedure Code which correspond to Sections 121 (2) and 125 of our Code were public documents came up for consideration. That question was submitted by a Bench of two Judges consisting of Subramania Ayyar J. and Davies J. for consideration by a Full Bench consisting of four Judges. The reference was made in view of the decision in *Empress v. Venkataratnam Pantulu* [2] to the effect that the defence was not entitled to obtain certified copies of the reports in question at the beginning of the trial. In referring the matter for consideration by the Full Bench Subramania Ayyar J. and Davies J. took the definite view that those reports were public documents. The Full Bench however—Subramania Ayyar J. dissenting—took the contrary view. They held that these reports were not public documents. In regard to the report under Section 157 Collins C.J. stated that it contained only the reasons that the officer-in-charge of the Police Station has for suspecting the commission of an offence while the report under Section 158 contained only the result of an investigation. Neither of these reports according to the learned Chief Justice could be regarded as the act or the record of an act of a public officer. Shephard J. while agreeing with Collins C.J. took the view that the "acts" referred to in Section 74 of the Evidence Ordinance were "final completed acts" as distinguished from acts of a preparatory or tentative character. Subramania Ayyar J. however adhered to his original opinion and stated :—

> "lastly, the documents in question fall within the language of Section 74 of the Evidence Act seems to my mind to admit of no doubt."

He also stated that these reports are records of a public servant's acts within the meaning of Section 74. It must be observed that this case

[1] *I. L. R. 20 Madras 189.* [2] *I. L. R. 19 Madras 14.*

did not deal with the question as to whether or not a first information is a public document. The learned Solicitor-General however relied on this case in support of his argument that the word "acts" appearing in Section 74 of the Evidence Ordinance contemplates "completed acts". As I observed earlier all the learned Judges who decided that case took the view that if the reports in question were public documents the defence was beyond any doubt entitled to obtain certified copies of the same. If I may say so, with respect, the reasons given by the learned Judges for holding that the word "acts" mean "completed acts" are not very convincing. A contrary view appears to have been taken by Tapp J. in *Nawab Bibi v. Sher Zaman* [1]. In that case certain statements made to the Police were sought to be admitted on the ground that they were public documents. In holding that these documents were inadmissible the learned Judge said :—

> "I may however briefly note that I am inclined to the opinion that they would be inadmissible as they are not public documents within the meaning of clause (iii) sub-section (i) of Section 74 of the Evidence Act as reports of the nature in question are not covered by Sections 154 and 155 of the Criminal Procedure Code . . . . "

The implication of this observation is that statements recorded under 154 and 155 fall within Section 74 of the Evidence Act which is identical with Section 74 of our Evidence Ordinance.

A Bench of three Judges of the Madras High Court held in *Nara Sinha Rama Rao v. Venkataramyya* [2] that a profit and loss statement and a statement showing the net income filed by an assessee on a direction issued by an Income-tax officer in terms of Section 22 of the Income-tax Act was a public document within the meaning of Section 74 of the Evidence Act and the assessee was entitled to obtain certified copies of the same. In that case Leach C.J. stated :—

> "I consider that the record of an income-tax case must be regarded as the record of the acts of the Income-tax officer in making his assessment and therefore that any document properly on the record is just as much a public document as the final order of assessment. "

This decision does not support the view expressed by Shephard J. in *Queen Empress v. Arumugam* that the word "acts" in Section 74 of the Evidence Act contemplates "final completed acts". In this case it was also held that a statement recorded by an Income-tax officer in the course of his examination of the assessee was a public document. That being so it is difficult to deny the same character to a first information recorded under Section 121 (1) of the Criminal Procedure Code. Chitaley and Annaji Rao in their commentary on the Indian Code of Criminal Procedure (3rd Ed. page 845) state that a statement recorded under Section 154 which is equivalent to Section 121 (1) of our Code is a public document and at page 847 they proceed to say :—

> "The accused is entitled to have a copy of the information but he can have it only under an order of a Court of Competent Jurisdiction or of an officer superior to an officer-in-charge of a police station. "

[1] *1930 A. I. R. (Lahore) 1067.* [2] *1940 A. I. R. (Madras) 768.*

The authority for their view that the first information recorded under Section 154 is a public document is the case of *Abdul Raham v. Empress* which is a decision of the High Court of Upper Burma. The report in that case, however, is not available to us.

In *Chittar v. Singh* [1] Sulaiman J. took the view that a first information report taken down by a Police officer amounts to an entry in an official record made by a public servant in the discharge of his official duty.

That the entry made in the information book of a first complainant, in terms of Section 121 (1) of the Criminal Procedure Code, is the record of an act of a public officer admits of no serious doubt. Such an entry therefore is a public document within the meaning of Section 74 of the Evidence Ordinance. It is the Common Law right of the person against whom a complaint is made to inspect the record of that complaint, but it is limited to the extent that the Government is entitled to refuse to show the document on the ground of State Policy, privileged communication, and the like. That is to say the accused person is entitled to inspection subject to the provisions of Sections 123, 124 and 125 of the Evidence Ordinance. In this case those Sections would not apply as the learned Solicitor-General said that he is prepared to show the record of the first complaint if the person who made it is called as a witness. The Solicitor-General took up that position because the 1st complaint is admissible in evidence only if the person who made it is called as a witness. There is a flaw in that argument; admissibility of a document is one thing and the right to obtain a certified copy of it is quite another. If a party to a case is entitled to receive a certified copy of the 1st complaint he may make use of it in more than one way. If the document is a public document and the person who applies for the certified copy establishes his right to inspect it he is entitled to obtain such copy at any time subject to the right of the Crown to claim privilege under Sections 123, 124 and 125 of the Evidence Ordinance. The Respondent's application for a certified copy of the first complaint though made before the trial, should therefore have been granted.

In view of my decision that the Respondent is entitled to obtain a certified copy of the first complaint in terms of Sections 74 and 76 of the Evidence Ordinance it does not become necessary to consider Mr. Jayawardene's other contention that his client is also entitled to the same right under the provisions of the Proof of Public Documents Ordinance.

Accordingly I dismiss the application of the Attorney-General.

SANSONI, J.—I agree.

Application dismissed.

[1] *1925 A. I. R. (Allahabad) 393.*