

## ATTORNEY-GENERAL

v.

## RANJIT JAYALATH

COURT OF APPEAL.

SENEVIRATNE, J. (PRESIDENT, C/A) AND BANDARANAYAKE, J.

C.A. 1677/84—M. C. TISSAMAHARAMA 19634.

JUNE 4, 1985.

*Criminal Law—Information Book—Right of accused to peruse it and all notes of investigation made by the police—Section 110(4) (proviso) of Code of Criminal Procedure Act.*

An accused person at a non—summary inquiry is not entitled to peruse the notes of investigation or all the statements recorded in the course of the investigation but only the statements to the Police of the witnesses whose evidence the Magistrate has recorded in the course of his inquiry up to the time of the application.

*Moses Fernando. S.S.C. for petitioner.*

Accused—respondents absent and unrepresented.

APPLICATION in revision of the order of Magistrate, Tissamaharama.

June 4, 1985.

**SENEVIRATNE, J. (President, C/A)**

The respondents have been represented on 28.01.1985 by counsel, who have stated that objections have not been filed, as only a matter of law is involved. After that, this matter has come up on 02.04.1985 and on that date also respondents have been unrepresented. The matter has come up for hearing today and respondents are not represented. Non-summary proceedings are being held in M. C. Tissamaharama against these accused-respondents on a charge of murder. In the course of the non-summary inquiry on 29.1.1984 the counsel who appeared for the accused had made an application to the learned Magistrate to peruse the information book which is to peruse all the notes of investigation made by the police. The prosecuting police officer had objected to this application to peruse at that stage all the notes of the investigation made by police. The learned Magistrate had overruled the objection and made order that the defence was entitled to peruse all the statements recorded in the course of investigation by the police and postponed the inquiry for 08.10.1984.

The Criminal Investigation Department brought it to the notice of the Attorney-General and State Counsel appeared on the next date of inquiry on 08.10.1984 and made submissions against the order made by the learned Magistrate to permit the defence at that stage to peruse all the notes of investigation. Learned counsel had submitted that this order contravenes section 110(4) proviso of the Code of Criminal Procedure Act No. 15 of 1979. The learned Magistrate then made order on those submissions, in fact, affirming his earlier order that under the said section 110(4) proviso, the defence can peruse all the notes of investigation and the statements recorded by the police in the course of their investigation. Learned Senior State Counsel now submits that the learned Magistrate has placed a wrong construction on the said proviso. Learned Senior State Counsel submits that the scope of the proviso is that when a preliminary inquiry under Chapter 15 is being held in respect of any offence, that is during the continuancy of such a non-summary inquiry the only statements of witnesses that the defence have a right to peruse, are the statements of the witnesses whose evidence the learned Magistrate has recorded in the course of the preliminary inquiry up to that time. The perusal of the statements of witnesses when a preliminary inquiry is being held must be limited to the statements of those who have given evidence up to the time the perusal of the statements are permitted. This section cannot be interpreted to mean the perusal of all the statements and notes made in the course of the full investigation. We have considered the order of the learned Magistrate and the submissions made by the Senior State Counsel. The Code of Criminal Procedure Act in Sinhala which according to constitution is the real law makes the submissions made by learned Senior State Counsel clearer than the English version. It is as follows. ❖

“ එසේ වුවද යම් වරදක් සම්බන්ධයෙන් (XV) පරිච්ඡේදය යටතේ මූලික පරීක්ෂණයක් පවත්වනු ලබන අවස්ථාවක, ඒ දක්වා වාර්තා ගත කර තිබෙන සාක්ෂිකරුවන්ගේ ප්‍රකාශ වූ දිනය විසින් ඉල්ලා සිටින ලද විට, පරීක්ෂණය පැවැත්වෙන අතරතුර විවෘත අධිකරණයේදී ඔහු විසින් කියවා බලනු ලැබීම සඳහා ඔහුට ලබා ගත හැකි විය යුතුයි. ”

(The underlining is meant for emphasis)

We held that the learned Magistrate has erred in law. Sub-section 4 of section 110 specifically states that neither the accused nor his agent shall be entitled to peruse the statements recorded during an investigation merely because the Court has called for those statements unless the Court uses those statements in accordance

with the Evidence Ordinance or they are used by a police officer or an inquirer or a witness to refresh memory. A construction in our opinion should be placed on this proviso in consonance *with the scheme of the section as appearing in sub-section 4, restricting the operation of the proviso to the perusal of statements of witnesses who have already given evidence at an inquiry.* It would not be consonant with the scheme as seen in sub-section 4, to give the proviso an interpretation as has been given by the learned Magistrate. Section 110 deals with two situations. In the first place, it deals with the recording of the statement by the police in the course of the investigation and in the second place, it deals with the use to which such statements may be put. We are concerned here with the second aspect of the section. The proviso is, therefore, clearly not referable to sub-section (1), (2) & (3) of the section. For these reasons, we set aside the order of the learned Magistrate dated 03.10.1984 and hold that the accused-respondents are not entitled to peruse all the statements recorded in the course of the investigation except in the manner set out by this Court in the interpretation of section 110(4) proviso. The application is allowed.

BANDARANAYAKE, J. – I agree.

*Application allowed.*

---