

APPELLATE CRIMINAL.

Before Lord-Williams and S. K. Ghose JJ.

IBRAHIM AHMAD

c.

KING-EMPEROR.*

1931

Jan. 26, 27.

Confession—Confession before an excise officer, if admissible in evidence—Excise officer, if a police officer—Indian Evidence Act (I of 1872), s. 25—Bengal Excise Act (Beng. V of 1909), ss. 46 (a), 73, 74—Opium Act (I of 1878), ss. 9 (c), 14, 15, 16, 20.

A confession made before an excise officer during investigation is inadmissible in evidence.

Rukumali v. Emperor (1), *Ah Foong v. Emperor* (2), *Harbhanjan Sao v. King-Emperor* (3) and *Tura Sardar v. Emperor* (4) dissented from.

Nanoo Sheikh Ahamed v. Emperor (5) followed.

The term "police officer" in section 25 of the Indian Evidence Act should not be construed in any strict technical sense, but according to a more comprehensive one.

Queen v. Hurribole Chunder Ghose (6) referred to.

On principle, the position of an excise officer cannot be distinguished from that of a police officer with regard to an offence under the Excise Act, because an excise officer is also interested in the conviction of the accused and in a position to dominate him.

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The material facts appear sufficiently from the judgment of the Court.

Gregory and Jogeshchandra Singha for the appellant. The trial is vitiated by the admission of an alleged confession of the accused, Exhibit 3. This confession was made to an excise inspector and was recorded by him. That officer was empowered to hold investigation and was actually holding the

*Criminal Appeal, No. 759 of 1930, against the order of N. Ahmad, Additional Chief Presidency Magistrate of Calcutta, dated Sept. 26, 1930.

(1) (1917) 22 C. W. N. 451.

(2) (1918) I. L. R. 46 Calc. 411.

(3) (1927) 31 C. W. N. 667.

(4) (1930) 52 C. L. J. 177.

(5) (1926) I. L. R. 51 Bom. 78.

(6) (1876) I. L. R. 1 Calc. 207.

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investigation at that time. No doubt, in some cases, it has been held that excise officers are not police officers and confessions before them were admissible in evidence. These cases have not considered the important provisions relating to the powers conferred upon the excise officers to investigate offences under the Excise Act. They have further confused between the powers under the Opium Act and those under the Excise Act. The whole question was discussed in a recent Full Bench case in the Bombay High Court. *Nanoo Sheikh Ahmed v. Emperor* (1). That decision was based on the Bombay Abkâri Act (Bom. V of 1878). Section 41 of the Act empowers the *âbkâri* officers to investigate offences under the Act. Section 74 of the Bengal Excise Act confers similar powers on the excise officers. This section was apparently not brought to the notice of the learned Judges of the Bombay Court, when they were considering and distinguishing the case of *Ah Foong v. Emperor* (2). On the principle enunciated by that case, a confession to an excise officer was inadmissible in evidence. The term "police officer" in section 25 of the Indian Evidence Act should be given a comprehensive meaning. *Queen v. Hurribole Chunder Ghose* (3). The matter should be referred to the Full Bench.

The facts and evidence were then criticised.

Beerbhushan Datta for the Crown. Section 25, by its terms, is confined to confessions made to a police officer. There is no reason why its scope should be extended by analogy to other persons, who are not members of the police force. The Bombay case was considered by this Court in the recent case of *Tura Sardar v. Emperor* (4). Their Lordships held that the point is now concluded by authorities. Section 74 of the Excise Act was considered in that case and it was held, following the earlier decisions, that such a confession would be admissible in evidence. In this case, at least, there is no necessity for referring

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(3) (1876) I. L. R. 1 Calc. 207.

(2) (1918) I. L. R. 46 Calc. 411.

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the matter to the Full Bench, inasmuch as excluding the confession altogether, there is ample material to bring the guilt home to the accused.

The facts were then dealt with.

GHOSE J. The appellant has been convicted under section 46 (a) of the Bengal Excise Act and under section 9 (c) of the Opium Act and has been sentenced, under the latter section, to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000, or in default to undergo further imprisonment for six months, and, under the former section, to undergo rigorous imprisonment for one year—the sentences of imprisonment being made to run concurrently.

The case for the prosecution is that, on the 30th July, 1930, premises No. 16/H/2, Armenian Street, were raided by a party of excise officers. The appellant was occupying two rooms, being the western and the eastern rooms on the north side of the first floor. It is alleged that in the western room was found a quantity of opium and cocaine worth about Rs. 15,000. The defence is that the room was not in the occupation of the appellant, but that it was in the occupation of one Hasmat Khan. According to the evidence adduced by the prosecution, witness No. 2, the sub-inspector, was the first person to go upstairs and he found the appellant coming out of a room. This was the western room in which all the stuff was found. The appellant wanted to re-enter the room, but he was stopped by the witness and then, with the permission of the witness, the appellant removed his wife and children to the eastern room. Thereafter, the western room was searched in the presence of the excise officers and other witnesses. The appellant himself brought out the cocaine and the opium contained in different receptacles from two *almirahs* and the key of one of the two *almirahs* was also produced by the appellant. It is said that the appellant made statements of a confessional nature both before the search and during the search. It is

also said that, after the search, he was taken to the excise barracks, where his confession was recorded by an excise inspector, prosecution witness No. 1, and it was signed by the appellant. This confession has been admitted into evidence as Exhibit 3.

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It is contended by Mr. Gregory, for the appellant, that the alleged confession is not admissible in evidence. He points out that, although, under the Opium Act, the powers of excise officers are limited, under the Bengal Excise Act the powers of such officers are virtually those of police officers holding investigation. Section 14 of the Opium Act (Act I of 1878) gives to officers of the excise department power to enter, arrest, and seize, on information that opium is being unlawfully kept in any enclosed place. Section 15 gives power to seize opium in open places. Section 16 provides that all searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure. Then section 20 provides that every person arrested and things seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station, and section 21 provides for the report of all particulars of such arrest or seizure. On the other hand, the Bengal Excise Act (Act V of 1909) goes further; section 73 prescribes that certain excise officers may investigate offences. This must be read with rule 35 of Volume I, page 108, of the Bengal Excise Manual (1918), which says that an excise inspector or sub-inspector is empowered to investigate any offence punishable under the Act. Then, section 74 of the Excise Act prescribes the powers and the duties of excise officers investigating offences and the provision shows that such officers are virtually deemed to be police officers. Mr. Gregory has drawn our attention to the Bombay Abkâri Act (Bombay Act V of 1878). Section 41 of that Act provides that certain *âbkâri* officers are empowered to investigate offences punishable under the Act, and these powers are not dissimilar to the powers which are conferred on excise officers, under similar situation,

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by section 74 of the Bengal Excise Act. Mr. Gregory has, therefore, contended that the principle laid down in the Full Bench decision of the Bombay High Court in the case of *Nanoo Sheikh Ahmed v. Emperor* (1) will apply. It is noteworthy that, in that case, Marten C. J. distinguished the case of *Ah Foong v. Emperor* (2), on the ground that that was a case under the Opium Act of 1878 and that in Bengal, as opposed to Bombay, there had not been conferred on excise officers powers of investigation and so on, as were conferred by the Bombay Abkâri Act. Apparently, the attention of the learned Judges was not drawn to the provisions of the Bengal Excise Act. In view of those provisions, I for my part do not see why the principles enunciated by the Full Bench of the Bombay High Court should not apply to the case of excise officers in Bengal. This brings me to section 25 of the Evidence Act, which provides that no confession made to a police officer shall be admitted in evidence against a person accused of any offence. But it has been held that, in construing that section, the term "police officer" should be read not in any strict technical sense, but according to a more comprehensive sense. See, for instance, the case of *Queen v. Hurribole Chunder Ghose* (3), where a Deputy Commissioner of Police, though acting in his capacity as magistrate and Justice of the Peace, was held to be a police officer within the meaning of section 25. On principle also, the position of a police officer cannot be distinguished from that of an excise officer, with regard to an offence under the Excise Act, because an excise officer is also interested in the conviction of the accused and in a position to dominate him. Outwardly also, there is hardly anything to distinguish the one class of officers from the other, for they wear uniforms which are not dissimilar and take part in the investigation in the same way. I am aware that, in some cases, the Calcutta High Court has taken the view that an

(1) (1926) I. L. R. 51 Bom. 78.

(2) (1918) I. L. R. 46 Calc. 411

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excise officer is not a police officer and, therefore, section 25 of the Evidence Act does not apply to the case of a confession made to an excise officer. This view was taken in the following cases, namely, *Rukumali v. Emperor* (1), *Ah Foong v. Emperor* (2), *Harbhanjan Sao v. King-Emperor* (3) and *Tura Sardar v. Emperor* (4). The first two are decisions under the Opium Act, the last two are under the Excise Act. In *Harbhanjan Sao v. King-Emperor* (3) Suhrawardy and Mitter JJ. followed the decision in *Ah Foong's* case (2). In the last case of *Tura Sardar v. Emperor* (4) Suhrawardy and Costello JJ. referred to the previous cases and accepted the view that the point was settled by authorities of this Court and as the law now stood an excise officer was not a police officer within the meaning of section 25 of the Evidence Act. In the first three cases it seems that the attention of the learned Judges was not directed to those provisions of the Bengal Excise Act which confer police powers on excise officers. In the last case, the learned Judges referred to section 74 of the Bengal Excise Act; but they held that, in that case, the question did not arise, having regard to the facts of that case. With great respect, I disagree with the decision in these cases, in so far as they lay down that a confession made before an excise officer during investigation is admissible in evidence, and I prefer to follow the principles laid down by the Bombay High Court in the case of *Nanoo Shaikh Ahmed v. Emperor* (5).

I may also mention that, personally speaking, I attach no importance to the confession recorded by the excise officer (Exhibit 3). It is not a confession which has been recorded by a magistrate with the safeguards that are prescribed by section 164 of the Code of Criminal Procedure. It will be noted that these safeguards have been considered so important by this Court, that it has prescribed a form for the use of the magistracy, so as to ensure that, on the

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face of the record, would appear those factors which would enable the Court to see that the confession was a perfectly voluntary one. Neither the document, Exhibit 3, nor the evidence that has been given in support of it, goes to show that the confession has not been caused by inducement or threat or promise, and is, therefore, not irrelevant under section 24 of the Evidence Act.

Having regard to the decisions in the Calcutta cases referred to above, it would have been necessary to make a reference to the Full Bench on the point as to the admissibility of the confession. But in the present case, we have taken the view that, upon the evidence, apart from the alleged confession, the appeal must fail. Therefore, reference to a Full Bench is not required.

[The judgment then dealt with the evidence and concluded as follows:—]

The appellant, if on bail, must surrender and serve out the remainder of the sentence.

LORT-WILLIAMS J. I agree.

Appeal dismissed.

A. C. R. C.