

## CRIMINAL REVISION.

*Before Lord-Williams and Jack J.J.*

JOGENDRANATH GORAI

v.

EMPEROR.\*

1935

July 9, 1935.

*Excise-officer—Statement to an excise-officer, if inadmissible—Bengal Excise Act (Beng. V of 1907), ss. 73, 74—Code of Criminal Procedure (Act V of 1898), s. 162.*

By the provisions of sections 73 and 74 of the Bengal Excise Act, it was intended that, in making an investigation under the Excise Act, the Excise Sub-Inspector should have the status of a police officer, and, therefore, a statement made to him in the course of such an investigation is inadmissible under the provisions of section 162 of the Code of Criminal Procedure.

*Per* LORD WILLIAMS J. The *rationes decidendi* in the case of *Ameen Sharif v. Emperor* (1), which applied to confessions under section 25 of the Evidence Act, apply equally to a statement under section 162 of the Code of Criminal Procedure.

Section 162 of the Code of Criminal Procedure applies to an accused person.

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The facts of the case were that, on the 24th April, 1934, at about 10 p.m., an Excise Sub-Inspector raided a room at 3, Ratan Babu Barhabâgân *basti* and found that distillation of illicit liquor was actually going on inside the room. There were two men in the room, namely, the present appellant and one Panchanan. Both of them tried to escape, but were seized. A full set of apparatus for manufacturing liquor as well as a large quantity of actually manufactured illicit liquor were found inside the room. Panchanan was sent up for trial and, while being examined under section 342 of the Code of Criminal Procedure, he stated that he and the appellant were both distilling illicit liquor, but that

\*Criminal Revision, No. 330 of 1935, against the order of T. H. Ellis, Sessions Judge of 24-Parganas, dated Feb. 28, 1935, confirming the order of H. N. Datta, Police Magistrate of Sealdah, dated Jan. 1, 1935.

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the appellant Jogendra had been let off because he had bribed the Excise Sub-Inspector. Panchanan was convicted and sentenced on his own plea; and the learned magistrate on his own motion placed Jogendra on trial. During the course of the trial, evidence was adduced regarding a statement alleged to have been made by Jogendra to the Excise Sub-Inspector on the 29th April, 1934, which contradicted his defence in the case. Jogendra's defence at the trial was that he was a relation of Panchanan; on that day he had gone to attend an invitation at a neighbouring house and from there had gone to Panchanan's house on a visit, when the excise raid took place. The trial court convicted and sentenced him under section 46 (a) of the Bengal Excise Act. An appeal to the Sessions Judge of 24-Parganás was dismissed. The accused, thereupon, obtained the present Rule from the High Court.

*Sudhangshushekkhar Mukherji* for the petitioners. One very important piece of evidence relied upon by the courts below is a statement made by the accused to the excise-officer who was investigating the case. He is in the same position as that of a police officer and the statement to him is inadmissible under section 162 of the Code of Criminal Procedure. The whole trial was vitiated thereby.

*The Officiating Deputy Legal Remembrancer, Debendranarayan Bhattacharjya*, for the Crown. The statement to the excise-officer was admissible. Section 162 of the Code of Criminal Procedure does not apply to the statement of an accused person. *Azimuddy v. Emperor* (1). Moreover the use of the word "powers" in section 74(a) of the Bengal Excise Act indicates that only powers given by sections 160 to 171 of the Code of Criminal Procedure are conferred on the investigating excise-officer. As section 162 does not create any power in the police officer, section 74 of the Excise Act has not made section 162 applicable to the excise-officers. The former should

be limited only to an investigation under Chapter XIV of the Code. Apart from the statement complained of, there is ample evidence to justify the conviction.

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JACK J. The appellant Jogendrakumar Gorai has been convicted under section 46(a) of the Bengal Excise Act and sentenced to rigorous imprisonment for one month.

The facts of the case are that he was found at 10 o'clock at night by Babu Manmohan Banerji, an Excise Sub-Inspector, in a room at No. 3, Ratan Babu Barhabâgân *basti* along with Panchanan, who has already been convicted of the offence of distilling illicit liquor. Distillation was actually taking place in the room and when the Sub-Inspector appeared, both of them tried to escape, but they were seized. In the room were found a full set of apparatus for manufacturing liquor from methylated spirit, three gallons of illicit liquor and other articles.

The accused's defence is that he was there by mere accident. Panchanan was related to him. He had gone to visit a neighbour of Panchanan and then to see Panchanan when the Sub-Inspector came in.

The courts below have found him guilty on the circumstantial evidence. Panchanan admitted his guilt and he was convicted. The courts held that the circumstances showed that the accused must also have been concerned in the manufacture of illicit liquor. These circumstances are, first of all, that he tried to escape; secondly, that he made no protest when he was caught and the defence, which, he has now raised, was only made when the Sub-Inspector recorded the statement five days after his arrest; and thirdly, that he attempted to deny all connection with Panchanan in a statement made at the time to the Sub-Inspector. This statement was wrongly admitted in evidence, (if the Excise Sub-Inspector is to be regarded as a Sub-Inspector of Police) under the provisions of section 162 of the Code of Criminal Procedure. That is a matter which I will deal with subsequently.

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It appears to me, taking all the circumstances into account, that they are in themselves a matter of grave suspicion against the accused. The room, in which this distillation had taken place, was the room of Panchanan, which he had hired, and there is no evidence that the accused in this case was in possession of these articles for distillation. All that has been really proved is that he was aware that distillation had taken place and that he was with Panchanan at the time. It was not proved that he was assisting in distillation or that he was in possession of any of the articles. So the evidence against him appears to amount to no more than grave suspicion. The trial appears also to be invalidated, owing to the fact that inadmissible evidence has been admitted, inasmuch as a statement made to the Sub-Inspector of Police under section 162 is inadmissible, the statements which were made by Jogendra to the Sub-Inspector of Excise at the time of his investigation were wrongly admitted. Under the provisions of section 74 of the Excise Act, any of the powers conferred upon a police officer making an investigation, or upon an officer-in-charge of a police station, by sections 160 to 171 of the Code of Criminal Procedure, can be exercised by an excise-officer investigating an offence which he is empowered to investigate under section 73 of the Excise Act. <sup>17</sup>

In this case, the excise-officer was investigating an offence and, therefore, he had the powers of a police officer under sections 160 to 171 and apparently, therefore, the statement made to him by any person in the course of an investigation would not be admissible. The objection to this view is raised on the ground that section 162 only applies to statements made to a police officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure: but section 74 refers specifically to this section and there can be little doubt that it was intended that this section should also apply to an excise-officer

investigating an excise case. Clause 3 of section 74 states that, for the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an excise-officer empowered under section 73, sub-section (2), is appointed, shall be deemed to be a police station, and such officer shall be deemed to be the officer-in-charge of such station. And section 156 refers to the investigation of cognizable offences within the area of the police station and, although section 162 refers only to statements made in the course of investigation under Chapter XIV of the Code of Criminal Procedure, it seems clear that it was intended that, in making an investigation under the Excise Act, the Excise Sub-Inspector should have the status of a police officer and, therefore, a statement made to him in the course of an investigation would also be inadmissible under the provisions of section 162. As these portions of Chapter XIV are included in section 74, they are made applicable to the statements recorded in the course of an investigation by an excise-officer. But apart from this technical ground, in my opinion, the evidence taken as a whole amounts merely to grave suspicion.

Another objection to the trial is that that the learned magistrate in his judgment refers to the statement made by Panchanan in the course of the trial of the case against him. He made a statement against Jogendra and that has been referred to in the judgments of the courts below. This was entirely improper, and there can be little doubt that the trying magistrate must have had some bias (owing to Panchanan's statement) against Jogendra from the start. In the circumstances, it would have been better if the trial had been conducted by some other magistrate, even if the case does not come under the provisions of section 190(c) of the Code of Criminal Procedure, inasmuch as this was a trial of the co-accused. On these grounds I think that the conviction and sentence should be set aside and the accused be released from bail.

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LORT-WILLIAMS J. I agree. Apart from the merits, the trial was vitiated by the admission of the statement made by the accused to the excise-officer during the course of the investigation. In my opinion, section 162 of the Code of Criminal Procedure applies to an accused person. Section 73(2) of the Bengal Excise Act provides that an excise-officer, specially empowered by the Local Government in respect of all or any specified class of offences punishable under this Act, may, without the order of a magistrate, investigate any such offence, which a court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions. Section 74(1) provides that such an excise-officer may exercise any of the powers conferred upon a police-officer making an investigation, or upon an officer-in-charge of a police station, by sections 160 to 171 of the Code of Criminal Procedure, 1898. And sub-section (3) provides that, for the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an excise-officer empowered under section 73, sub-section (2), is appointed shall be deemed to be a police-station, and such officer shall be deemed to be the officer-in-charge of such station.

Reading these sections together, it seems to me clear that section 162 applies to such an investigation by an excise-officer, and that a statement made to him by an accused person in the course of such investigation comes within the provisions of section 162 of the Code of Criminal Procedure. Moreover, the *rationes decidendi* in the case of *Ameen Sharif v. Emperor* (1), which applied to confessions under section 25 of the Evidence Act, in my opinion apply equally to a statement made under section 162, Criminal Procedure Code.

*Accused acquitted.*

A. C. R. C.

(1) (1934) I. L. R. 61 Cal. 607.