

Raphael Pereira Vs. Emperor

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Court : Mumbai

Decided On : Apr-07-1926

Reported in : (1926)28BOMLR674; 97Ind.Cas.665

Judge : Norman Macleod, Kt., C.J. and ;Crump, JJ.

Appeal No. : Criminal Appeal No. 32 of 1926

Appellant : Raphael Pereira

Respondent : Emperor

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. The appellant was convicted by the Second Presidency Magistrate, Bombay, on three charges, firstly, under Section 9(e) of Act I 1878, taken with Section 114, Indian Penal Code; secondly, under Section 19(f) of Act XI of 1878, taken with Section 114, Indian Penal Code; and, thirdly, under Section 43(1) (a) of Act V of 1878, taken with Section 114, Indian Penal code. The Magistrate relied upon the statement, Exhibit H, made by the appellant to Mr. Hudson, the Excise Officer, which, he was satisfied, was made without inducement, threat, or promise.

2. It has been contended in appeal that Mr. Hudson occupied the position of a Police Officer within the meaning of that term in Section 162, Criminal Procedure Code, and Section 25 of the Indian Evidence Act. Admittedly, Mr. Hudson was not a Police Officer, but it is argued that by virtue of Section 20 of Act I of 1878, as amended by Bombay Act II of 1923, statements made to him should be treated as if they had been made to a Police Officer. Section 20 runs as follows :-

Every officer of the department of Said and Excise not below the rank of Inspector and every officer of the Customs department not below the rank of Preventive Officer, who may in right of his office be authorised by the Local Government in this behalf, shall, within the area for which (sic) appointed, exercise powers with regard to offences under this Act (sic) by an officer in charge of a Police station vnder (sic) Procedure, 1898.

3. The argument is that because Mr. Hudson(sic) to exercise powers similar to those exercise (sic) charge of a Police station, he must be considered as a Police Officer, so that the statement made to him by accused No. 2 is not admissible in evidence.

4. The same point was considered in *Ah Foong v. Emperor* where the Chief Justice said (pp, 418, 419) :-

The first important ground, upon which the learned Counsel for the appellant has relied, is that the learned Magistrate was wrong in taking into consideration the abatement of the first two accused against the appellant. I propose to deal with that question first.

5. One of the points Mr. Das, the learned Counsel for the appellant, urged was that, assuming that these two statements of the 1st and the 2nd accused were confessions, they were not admissible in evidence, in as much as they were made to people who were in reality Police Officers, although not called Police Officers : and, that consequently, under the provisions of Section 25 of the Evidence Act, these statements ought not to have been admitted. In my judgment that is not a good point. I do not think it is possible that the Excise officers in this case could be said to be Police Officers, and that the statements made by the 1st and the 2nd

accused were not admissible by reason of the fact that they were made to Police Officers.

6. In my opinion that judgment should be followed. We, therefore, dismiss the appeal.

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