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Prem Shankar Vs. State

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Court : Allahabad

Decided On : Oct-12-1953

Reported in : AIR1954All342

Judge : Desai, J.

Acts : Police Act, 1861 - Sections 20, 23 and 24; Uttar Pradesh Excise Act, 1910 - Sections 70

Appeal No. : Criminal Revn. No. 1713 of 1953

Appellant : Prem Shankar

Respondent : State

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Desai, J.

1. The applicant, who has been convictedunder Section 60(a) of the Excise Act, challenges the conviction on the ground that the Magistrate took cognizance of the offence said to have been committed by him on a report made by a station officer

of a police station in contravention of the provisions of Section 20 of the Police Act. Under Section 70 of the U. P. Excise Act, no Magistrate can take cognizance of an offence punishable under Section 60 'except.....on the complaintor report of an Excise Officer.' An Excise Officer is denned in Section 3(2) to mean 'any officer or person appointed or invested with powers under Section 10.' Section 10 authorises the State Government to empower officers and persons to perform certain acts and duties. The State Government has, in exercise of that power, conferred powers upon station officers in charge of police stations some of the powers mentioned in Section 10.Accordingly a station officer in charge of a police station is an excise officer and a Magistrate can take cognizance of an offence on a report made by him.

In the present case, the learned Magistrate took cognizance of the offence on the report of a station officer. Section 20 of the Police Act lays down that police officers enrolled under the Police Act

'shall not exercise any authority, except the authority provided for a police officer under this Act and any other Act which shall hereafter be passed for regulating criminal procedure.'

Under Section 23 of the Police Act, it is the dutyof every police officer

'to prevent the commission of offences and public nuisances, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend.'

Section 24 makes it

'lawful for any police officer to lay any information before a Magistrate and to apply for a summons, warrant etc.'

2. The argument advanced on behalf of the applicant is that, though the learned Magistrate could take cognizance of an offence on a report of an excise officer, a station officer is prohibited by Section 20 of the Police Act from exercising , the powers of an excise officer and therefore from making a report to a Magistrate for taking the cognizance of an offence. It may be assumed that the U. P. Excise Act

is not an Act passed for regulating criminal procedure within the meaning of Section 20 of the Police Act, though some of its provisions do regulate criminal procedure. Section 20 does not say that the Act must have been passed exclusively for regulating criminal procedure but the regulating of criminal procedure does not seem to be any of the objects behind the passing of the U. P. Excise Act and it cannot be said to have been passed for regulating criminal procedure. It can, therefore, be said that a station officer cannot exercise any authority conferred upon him under the U. P. Excise Act.

But Section 20 permits him to exercise authority conferred upon him by the Police Act itself. So he can detect and bring offenders to justice and can lay any information before a Magistrate and can apply for the issue of a summons, warrant etc. The station officer, in the present case, has simply laid information before the learned Magistrate that the applicant has committed an offence and applied for the issue of a summons against him. It cannot be disputed that he could do this under the Police Act. It does not matter if the offence that the applicant is said to have committed is punishable under the U. P. Excise Act. The powers conferred by Sections 23 and 24 are with regard to all offences punishable under any Act whatsoever.

If the station officer had not been conferred the powers of an excise officer, though he could report to the Magistrate that the applicant has committed an offence punishable under Section 60 of the Excise Act, the Magistrate could not take cognizance of the offence on that report because he would be barred from doing so by Section 70 of the Excise Act. But in the present case, the station officer has been rightly or wrongly given the powers of an excise officer. He is a 'de facto* excise officer, if not a 'de jure' excise officer. Section 70 contemplates a 'de facto' excise officer; there are no such words as 'duly appointed' in it. Further when the Act itself treats him as an excise officer, he must be deemed to satisfy the requirements of Section 70. The Act must beread as a whole and it would be against all canons of interpretation to hold that he is not an Excise Officer within the meaning of Section 70, when he is one as defined in Section 3 (2) of it.

Section 70 specifically, and regardless of the provisions of the Police Act, permits a Magistrate to take cognizance of an offence on his report. It is of no consequence that he cannot validly exercise the powers of an Excise Officer; his ability to do so is not a condition precedent for his making a report, and his making a report is not necessarily exercising an Excise Officer's powers. His making a report can be treated as exercising his powers under the Police Act. Section 70 does not require that he must make a report as an Excise Officer, or in the exercise of his powers of an Excise Officer, but even if it is interpreted to require this, the requirement is subject to the provisions of Section 3(2) as explained above. It is the Excise Act which requires a report by anexcise officer and it is that very Act which creates an excise officer.

There is nothing in it to prevent a police officer's being conferred the powers mentioned in Section 10 of it. It contemplates the conferring of these powers upon a police officer. As soon as the powers are conferred upon him he becomes an excise officer even if he cannot validly exercise them. It is irrelevant to consider whether the Police Act prevents the conferment of those powers upon him. The question before us is whether he is an excise officer within the meaning of the Excise Act and not whether he is an excise officer within the meaning of the Police Act. Therefore, I find that the station officer was not debarred from making a report and is an excise officer; the learned Magistrate could take cognizance of the offence on his report.

3. There is no other contention raised before me and the application is dismissed.

4. There is no justification for certifying that the case is a fit one for appeal to the SupremeCourt under Article 134(1)(c) of the Constitution.

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