

State of Madhya Pradesh Vs. Mohammad Abdul Rahman and ors.

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Court : Madhya Pradesh

Decided On : Aug-07-1972

Reported in : 1973CriLJ290

Judge : P.K. Tare and ;A.P. Sen, JJ.

Appellant : State of Madhya Pradesh

Respondent : Mohammad Abdul Rahman and ors.

Judgement :

A.P. Sen, J.

1. The question for this Division Bench is-

Whether a Food Inspector functioning as such under the Prevention of Food Adulteration Act is a police officer or not within the meaning of the expression 'police officer' appearing in Section 25 of the Indian Evidence Act

2. The facts are shortly as follows. The two accused, Bashir Khan and Rashid Khan, are being tried on a complaint by the Food Inspector under Section 7 of the Prevention of Food Adulteration Act. 1954 : read with Rule 44 of the Prevention of Food Adulteration Rules 1955. They are charged with having sold an admixture of cow's and buffalo's milk, which is an offence under Section 16 of the Act. One piece of evidence against them was an alleged statement by one of the accused to

the Food Inspector to the effect that the milk in question was neither pure Cow's milk nor buffalo's milk but was a mixture of both. On objection by the accused the learned trying Magistrate sustained their objection that the confessional statement was inadmissible under Section 25 of the Evidence Act on the hypothesis that the Food Inspector, who investigated into the offence, being invested under Section 10(8) of the Act with the powers of a police officer under Section 57 of the Code of Criminal Procedure, was a 'police officer' within the meaning of the section. Being aggrieved, the Food Inspector preferred a revision before the learned Additional Sessions Judge, who reported the matter under Section 438 of the Code, for setting aside the order of the learned Magistrate. The reference was heard by a learned Single Judge, and in view of the importance of the question, he referred the same to a larger Bench.

3. Sub-section (8) of Section 10 of the Prevention of Food Adulteration Act, 1954 reads as follows-

10(8).-- Any food inspector may exercise the powers of a police officer under Section 57 of the Code of Criminal Procedure, 1898 (5 of 1898) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

4. Section 25 of the Evidence Act enacts-

25.-- No confession made to a police officer shall be proved as against a person accused of an offence.

The broad ground for not admitting confessions to a police officer is to avoid the danger of admitting false confessions.

5. There was a difference of opinion among the High Courts as to the meaning of the words 'police officer' used in Section 25 of the Evidence Act. One view was that those words must be construed in a broad and comprehensive sense and all officers would be police officers within the meaning of 'those words if they had the powers of the police officer with respect to investigation of offences with which they were concerned even if they were police officers properly so called or not.

See Per Garth C.J. in *Queen v. Hurribole Chunder Ghose* (1875-76) ILR 1 Cal 207; Marten C.J. in *Nanoo Sheikh Ahmed v. Emperor* (1927) ILR 51 Bom 78 : 28 Cri.L.J., 122 (FB) and *Ameen Shariff v. Emperor* (1934) ILR 61 Cal 607 : 35 Cri.L.J. 1071 (FB). The-narrow view was that those words in Section 25 meant a police officer properly so called and did not include officers of other departments of Government who might be charged with the duty to investigate under Special Acts : special crimes like the excise Or customs offences See : *Ah Foong v. Emperor* (1919) ILR 46 Cal 411 : 20 Cri.L.J. 24 and *Radha Kishun Marwari v. King Emperor* (1933) ILR 12 Pat 46 : 34 Cri.L.J. 1 (SB).

6. The matter is now no longer res integra. The Supreme Court has in a series of decisions examined the state of law on the subject, and while proceeding on the assumption that the broad view was correct has laid down the test for determining the question whether or not a particular officer is a police officer for purposes of Section 25 of the Evidence Act

7. In *State of Punjab v. Barkat Ram* : [1962]3SCR338 , the Supreme Court while dealing with the Customs Officer under the Land Customs Act 1924 or under the Sea Customs Act 1878 stated that he was not a police officer for the purpose of Section 25 of the Evidence Act. Raghubar Dayal J., who delivered the majority judgment of the Court observed:. that the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order.

The powers of Customs Officers are really not for such purpose. Their powers are for the purpose of checking the smuggling of goods and the due realisation of customs duties and to determine the action to be taken in the interests of the revenues of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines.

8. In *Raja Ram Jaiswal v. State of Bihar* 0065/1963 : 1964 CriLJ705 the decision in *Barkat Ram's case* : [1962]3SCR338 (supra) was distinguished and it was observed that the expression 'police officer' in Section 25 of the Evidence Act was not to be construed narrowly but in a wide and popular sense. There, the Court was dealing with an Excise Inspector or Sub-Inspector under the Bihar and Orissa

Excise Act. 1915, upon whom all the powers of a police officer were conferred, and he was entitled to investigate any offence under the Excise Act and to submit a charge-sheet. On that account, the Supreme Court held that he must be regarded as a police officer within the meaning of Section 25 of the Evidence Act.

9. The case of Rajaram Jaiswal : 1966 CriLJ1353 (supra) came up for discussion in the third of series of these cases, namely, in Badku Joti Savant v. State of Mysore : 1966 CriLJ1353 . The appellant there had been found in possession of contraband gold. He was prosecuted under Section 167(81) of the Sea Customs Act, read with Section 9 of the Land Customs Act. The question arose Whether the statement made by the appellant to the Deputy Superintendent of Customs and Excise under the Central Excises and Salt Act, 1944, was a police officer within the meaning of those words in Section 25 of the Evidence Act. Even though the Excise Officer had been invested with most of the powers which an officer-in-charge of a police-station exercises while investigating a cognizable offence, the Supreme Court held that he was not a police officer within the meaning of Section 25 of the Evidence Act because firstly, he was not vested with all the powers of an officer-in-charge of a police station, and secondly, because he had no power to submit a report under Section 173 of the Code of Criminal Procedure.

10. The same view was taken by Sikri. J. in P. Shanker Lall v. Asst. Collector of Customs Madras Cri Appeals Nos. 52 and 104 of 1965 D/- 12.12.1967 : 1968 SCD 385 when he held that a confession made before the Assistant Collector of Customs was not inadmissible under Section 25 of the Evidence Act.

11. The view expressed in Barkat Ram's case : [1962]3SCR338 (supra) has been re-affirmed by the Supreme Court in two recent decisions : Ramesh Chandra Mehta v. State of West Bengal : 1970 CriLJ863 and Illias v. Collector of Customs Madras. : 1970 CriLJ998 . The entire case law on the subject has been discussed by Shah J. in Ramesh Chandra Mehta's case : 1970 CriLJ863 and by Grover. J. in Illias's case. The ratio underlined in these cases is:

The test for determining whether a particular officer is a 'police officer' for the purpose of Section 25 of the Evidence Act is whether he is invested with all the powers which an officer-in-charge of a police-Station exercises when investigating

a cognizable offence, including the power to file a charge-sheet under Section 173 of the Code of Criminal Procedure, or he is deemed to be an officer-in-charge of a police-station.

12. That test is clearly not fulfilled in the case of a Food Inspector functioning as such under the Prevention of Food Adulteration Act 1954. He is not invested with all the powers which an officer-in-charge of a police station exercises when investigating a cognizable offence, including the power to file a charge-sheet under Section 173 of the Code of Criminal Procedure. Nor is he deemed to be an officer-in-charge of a police-station. The only function of a Food Inspector is to prevent the sale of adulterated food stuffs. He is appointed by the appropriate Government under Section 9(1). Under Sub-section (2) of Section 9, he is deemed to be a public servant. In carrying out his duties he is invested with certain powers under Section 10. Under the proviso to Sub-section (5), he shall, in exercising the powers of entry upon and inspection of any place under this section follow as far as may be the provisions of the Code of Criminal Procedure relating to the search or inspection of a place by police officer executing a search warrant issued under that Code. Under Sub-section (8), he is invested with the powers of a police officer under Section 57 of the Code for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized. The proviso to Sub-section (5) has been enacted as a safeguard for regularity of searches. He is required to follow the procedure laid down in Sections 48, 52, 102 and 103 of the Code as far as may be while exercising the powers of entry upon and inspection of any place. No doubt, under Sub-section (8), a Food Inspector is invested with the powers of a police officer under Section 57 of the Code but that is only for a limited purpose, i.e. for the purpose of ascertaining the true name and residence of the person from whom the sample is taken or an article of food is seized.

13. On a careful consideration of the provisions of the Prevention of Food Adulteration Act, 1954 particularly those contained in the proviso to Sub-section (5) to Section 10 and Sub-section (8) to that section. We are of the view that a Food Inspector is not a 'police-officer' for the purposes of Section 25 of the Evidence Act.

14. The question referred by the learned Single Judge is. therefore, answered in the negative. The reference made by the learned Additional Sessions Judge. East-Nimar Khandwa, is accordingly accepted, and the order of the learned Magistrate is set aside

Reference answered in the negative.

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