

Ranjit Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-02-1973

Reported in : 1974CriLJ719; 1973MPLJ663

Judge : P.K. Tare, C.J. and ;G.P. Singh, J.

Appellant : Ranjit Singh

Respondent : The State of Madhya Pradesh

Judgement :

G.P. Singh, J.

1. The applicant is being prosecuted for an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. It is alleged by the prosecution that the applicant made a confessional statement to Manaklal (P. W. 2), Inspector. Railway Protection Force. In the course of the statement of Manaklal, the applicant objected that the confession was inadmissible and cannot be proved as it was hit by Section 25 of the Evidence Act. This objection was overruled by the trial Court against which the applicant preferred a revision which was dismissed by the fourth Additional Sessions Judge. Jabalpur. Thereafter, the present revision was filed by the applicant,

2. This revision first, came up for hearing before Naik, J. Before him. an order of Bhawe, J. in Criminal Revision No. 72 of 1968, (Badri Vishal v. State of Madhya

Pradesh) decided on 8-10-1969 (reported in 1972 Jab LJ 905) was cited to support the proposition that an officer of the Railway Protection Force is not a police officer within the meaning of Section 25 of the Evidence- Act. Naik. J. was, however, not willing to accept that view and, therefore, he has referred the case to a larger Bench.

3. The sole question in this revision is whether an officer of the Railway Protection Force can be said to be a police officer within the meaning of that expression as it is used in Section 25 of the Evidence Act.

4. The Railway Protection Force is constituted and regulated by the Railway Protection Force Act, 1957. The object of the constitution of the Force, as shown by the long title of the Act. is 'the better protection and security of railway property'. The officers and members of the Force are deemed to be rail-way servants as provided in Section 10 of the Act. The duties of the Force are enumerated in Section 11. These duties are (a) to execute all orders lawfully issued by superior authority; (b) to protect and safe-guard railway property : and (c) to do any other act conducive to the better protection and security of railway property. Power to arrest without warrant and power to search without warrant have been conferred upon the officers and members of the Force under Sections 12 and 13 in certain cases in connection with offences relating to railway property. The procedure to be followed by an officer or a member of the Force after making an arrest is indicated in Section 14. That section says that any superior officer or member of the Force making an arrest under this Act shall, without unnecessary delay, make over the person so arrested to a police officer, or in the absence of a police officer, take such person or cause him to be taken to the nearest police station. This section makes it clear that an officer or a member of the Force cannot detain a person after making arrest and the person arrested has to be given in custody of a police officer without any delay.

The provisions of the Railway Property (Unlawful Possession) Act, 1966, may now be noticed. Section 6 of the Act empowers any superior officer or member of the Force to arrest any person who has been concerned in an offence punishable under the Act or against whom reasonable suspicion exists of his having been so

concerned. The arrest can be made without an order from a Magistrate and without warrant. Provision for inquiry is made under Section 8. After an arrest is made under Section 6, an inquiry has to be made into the charge against the person arrested by an officer of the Force. For the purpose of inquiry, the officer exercises the same powers and is subject to the same provisions as the officer incharge of a police station exercises and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case. Section 8 further authorizes that if the officer making inquiry is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall admit him to bail to appear before a Magistrate having jurisdiction in the case or forward him in custody to such Magistrate. Further, if it appears that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he has to be released on executing a bond, with or without sureties. Section 9 of the Act confers power on an officer of the Force to summon any person to give evidence or to produce a document in an inquiry which the officer is making. The inquiry under the Act is deemed to be a 'judicial proceeding' within the meaning of 'Sections 193 and Section 228 of the Indian Penal Code. In cases provided in Section 10 of the Act an officer of the Force can apply to a Magistrate for issue of a search warrant. Section 11 provides that all searches and arrests made under the Act are required to be carried out in accordance with the provisions of the Code of Criminal Procedure.

5. A perusal of the provisions of the Railway Protection Force Act, 1957, and the Railway Property (Unlawful Possession) Act, 1966 goes to show that the Railway Protection Force is constituted for protection and security of railway property and to that end the officers and members of the Force have been conferred powers of making arrests, searches and inquiry. These powers bear resemblance with the powers exercised by a police officer under the Code of Criminal Procedure while investigating a cognizable offence. There are, however, some essential points of difference. An officer or a member of the Force after making an arrest can release the arrested person on bail, but he cannot keep the arrested person in custody as can be done by a police officer before the arrested person is produced before a Magistrate. We have already referred to Section 14 of the Railway Protection Force Act which requires that a person arrested by an officer or a member of the

Force must, without unnecessary delay, be made over to a police officer, or in the absence of a police officer the person arrested should be taken to the nearest police station. A police officer after making an arrest has to produce the arrested person within 24 hours before the nearest Magistrate and till that time has the custody of the arrested person. The arrested person also continues to remain in his custody If police remand is granted by the Court. A police officer, therefore, has sufficient opportunity to extort a confession from the arrested person. But that is not the position in case of an officer or a member of the Force, because an officer or a member of the Force after making an arrest has to make over the arrested person to a police officer without any unnecessary delay, unless the arrested person is released on bail.

Another significant difference is that inquiries made by an officer of the Force are deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of the Indian Penal Code; whereas, no inquiry or investigation conducted by a police officer is deemed to be a judicial proceeding for any purpose.

Lastly, an officer of the Force cannot file a charge-sheet of the nature mentioned in Section 173 of the Code of : Criminal Procedure as can be done by a police officer in a cognizable case; he can only file a complaint, before a Magistrate regarding commission of an offence relating to railway property.

6. Having regard to the points of distinction indicated above, it cannot be held that an officer of the Railway Protection Force is a police officer within the meaning of Section 25 of the Evidence Act. In *Ramesh Chandra v. State of W. B.* : 1970 CriLJ863 while dealing with a Customs Officer under the Sea Customs Act, 1878, the; Supreme Court pointed out that 'the test for determining whether an officer of customs is to be deemed a police officer is whether he is invested with all the powers of a Police officer for investigation of an offence including the power to submit a report under Section 173 of the Code of Criminal Procedure.' The same test was reiterated in *Illias v. Collector of Customs Madras* : 1970 CriLJ998 while dealing with a Customs Officer under the Customs Act, 1962. In this case all previous cases were reviewed and it was pointed out that the ratio of the decision in *Badku Joti Savant's case* : 1966 CriLJ1353 is that 'even if an officer under the

special Act has been invested with most of the powers which an officer-in-charge of a police station exercises when investigating a cognizable offence he does not thereby become a police officer within the meaning of Section 25 of the Evidence Act unless he is empowered to file a charge-sheet under Section 173 of the Code of Criminal Procedure. Having regard to the principles laid down in these cases, we agreeing with Bhawe, J., are clearly of opinion that an officer of the Railway Protection Force cannot be held to be a police officer in the context of Section 25 of the Evidence Act.

7. Learned Counsel for the applicant strongly relied upon *Rajaram v. State of Bihar* 0065/1963 : 1964 CriLJ705 . That case related to an Excise Officer under the Bihar and Orissa Excise Act, 1915. under which an Excise Officer was deemed to be an officer-in-charge of a police station and was entitled to investigate any offence under the Excise Act and he could exercise all the powers which an officer-in-charge of a police station could exercise under Chapter XIV of the Code of Criminal Procedure. The Excise Officer under the Bihar and Orissa Excise Act, therefore, had all the powers of a police officer including the power of submitting a charge-sheet under Section 173 of the Code of Criminal Procedure. Rajaram's case is, therefore, distinguishable. Indeed, it has been so distinguished by the Supreme Court in the cases to which we have earlier referred.

8. For the reasons indicated above, we are of opinion that the trial Magistrate was right in holding that the confession made by the applicant to the Inspector of Railway Protection Force was admissible in evidence and was not hit by Section 25 of the Evidence Act.

9. The revision fails and is dismissed.