

Sunil Kumar Datta and ors. Vs. the State of West Bengal

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Court : Kolkata

Decided On : Nov-22-1962

Reported in : AIR1963Cal431,1963CriLJ129

Judge : S.K. Sen and ;Niyogi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162, 165, 172 and 173(4); ;[Bengal Excise Act, 1909](#) - Section 74 and 74(1); ;Evidence Act - Section 145

Appeal No. : Criminal Revn. No. 874 of 1962

Appellant : Sunil Kumar Datta and ors.

Respondent : The State of West Bengal

Advocate for Def. : S.N. Banerjee, D.L.R.

Advocate for Pet/Ap. : Ajit Kumar Dutt and ;Dilip Kumar Dutt, Advs.

Judgement :

Sen, J.

1. This revisional application is directed against an order of Shri Amal Kumar Chatterjee, Presidency Magistrate, Calcutta, rejecting a prayer made by the accused petitioners for supplying copies of statements which may have been

recorded by the Excise Officer in the course of the investigation of the case, which is one under Section 120B of the Indian Penal Code taken with Section 46(a) of the Bengal Excise Act. The learned Magistrate observed that the investigation having been made under a special statute, namely, Bengal Excise Act, the statutory provisions of Section 173 (4) of the Criminal Procedure Code were not applicable and therefore the accused were not entitled to copies, as of right. The learned Magistrate also considered whether he should use his discretion in directing that copies should be furnished, and referred to the decision in : AIR1955 Cal138 Natabar Jana v. State, where the question of supplying copies of statements of witnesses recorded by the police in a case where the investigation was not held under Chapter 14 of the Code, was considered. The learned Magistrate however did not consider it necessary to exercise his discretion in favour of the accused in view of the facts of the particular case.

2. Mr. Ajit Kumar Dutt appearing for the petitioners has urged that in view of the provisions of Section 74 and particularly Section 74(4) of the Bengal Excise Act 1909, an investigation by the Excise Officer must be deemed to be an investigation under Chapter 14 of the Code, and therefore the provisions of Section 173 (4) of the Criminal Procedure Code are attracted, and therefore the accused are entitled to be furnished with the copies of the statements which may have been recorded by the Excise Officer in the course of the investigation. There is a decision to the contrary by a Division Bench of this Court, namely, the Superintendent and Remembrancer of Legal Affairs, Government of West Bengal v. Basudeb Das, 66 Cal WN 1040. Guha Ray, J., who delivered the judgment of the Bench held that in view of the terms of Section 74 of the Bengal Excise Act as it exists at present, the provisions of Section 173 (4) of the Code cannot be said to be applicable to a case investigated by an Excise Officer, and it is not open to the Magistrate to make an order directing the Excise Officer to make over to the accused before the commencement of the trial copies of the report in regard to the charge and of the first information report and all other relevant papers on which the prosecution proposes to rely. Mr. Dutt has urged that the Division Bench in delivering the above judgment did not sufficiently consider the provisions of Sub-section (4) of Section 74 of the Bengal Excise Act, which provides that when an investigation by an Excise Officer is completed and it appears that there is

sufficient evidence, the Investigating Officer shall submit a report to a Magistrate having jurisdiction to enquire into or try the case, and the report shall for the purposes of Section 190 of the Criminal Procedure Code be deemed to be a police report. Guha Ray, J., relied on the fact that by Sub-section (i) of Section 74 Sections 160 to 171 of the Criminal Procedure Code were made applicable and Section 173 was not made applicable and on the other hand there was a specific provision in Sub-section (4) of Section 74 for forwarding the report to the Magistrate on which the Magistrate was to take cognizance. Guha Ray, J., also referred to other provisions of the Excise Act and came to the conclusion that an investigation by an Excise Officer was an investigation under the special provisions of the Excise Act itself, although he could exercise in the course of the investigation certain powers conferred by Sections 160 to 171 of the Criminal Procedure Code. Mr. Dutt has relied on the fact that Sub-section (4) of Section 74 uses the term 'police report' and provides that the report submitted by an Excise Officer after investigation shall be deemed to be a police report for the purposes of Section 190 of the Criminal Procedure Code. He has referred to the technical meaning of the term 'police report' as interpreted by various decisions of this Court, one of the latest of which is *Premchand Khetry v. State*, : AIR1958 Cal213 , wherein after referring to the previous cases it was observed that the expression. 'Police report', as used in the Code for reports of offences made by the police, carries a special meaning; as used in the old Section 190 (1) (b) of the Code the expression was interpreted as meaning reports made under Section 173 of the Code, that is to say, reports of cognizable offences or of non-cognizable offences with regard to which there had been a direction by the Magistrate to investigate, made after an investigation under Chapter 14. Mr. Dutt has urged that use of the term 'police report' in Sub-section (4) of Section 74 must be taken in that particular sense and that, therefore, the report of the Excise Officer submitted to the Magistrate after investigation must be deemed to be a report under Section 173 and, therefore, all the provisions of Section 173 of the Code would be attracted, including the provisions of Section 173 (4) under which the Investigating Officer, after submitting his report to the Magistrate, is under the obligation to furnish to the accused copies of the relevant documents including the statements of witnesses on which the prosecution relies.

3. It should be pointed out, however, that there are various considerations which negative the argument of Mr. Dutt. The first consideration which may be mentioned is that while Sub-section (1) of Section 74 of the Excise Act makes Sections 160 to 171 of the Code applicable, it does not specifically make Section 173 applicable; but, on the other hand, Sub-section (4) provides for submission of report to a Magistrate after the investigation is complete, and moreover the Act provides in Section 83 that no Magistrate shall take cognizance of an offence referred to under Sections 46, 48, 52 and 53, except of his own knowledge and suspicion or on complaint or report by an Excise Officer or an Officer empowered in this behalf, by the Provincial Government; and in respect of offences under Sections 54, 48 and 59 except when the complaint or report is of the Collector or an Excise Officer authorised by the Collector in this behalf. Ordinarily, therefore, an Officer-in-Charge of a police station cannot investigate a case under the Excise Act or submit a report under Section 173 (4). It is no doubt true that Sub-section (3) of Section 74 provides that for the purposes of Section 156 of the Criminal Procedure Code, the area to which an Excise Officer is appointed shall be deemed to be a police station and such Officer shall be deemed to be an Officer-in-charge of such, station, -- but this is only for the purposes of enabling the Excise Officer to carry out the Investigation, without obtaining the order of a Magistrate. It does not alter the fact that excise offences can only be investigated by Excise Officers and not by regular Police Officers, who are Officers-in-Charge of Police stations.

4. The second consideration which may be referred to is that in Sub-section (4) of Section 74 of the Excise Act though it is provided that for the purposes of Section 190 of the Criminal Procedure Code the report submitted by the Excise Officer shall be deemed to be a 'police report', Section 190 of the Code, as it stands at present, no longer uses the term 'police report' but the term was altered in 1923 into 'report in writing of such facts made by any police officer'. In the Excise Act the wording was not amended at the same time and the old wording which occurred in Section 190 (1) (b) of the Code before the amendment of 1923 still persists. Since Section 190 of the Code does not now contain the term 'police report', that term as used in Sub-section (4) of Section 74 of the Excise Act can no longer be taken to mean a police report in the technical sense, as interpreted in Prem Chand Khettry's case, but can only be regarded as equivalent to 'a report in

writing of the facts made by any police officer', as used in amended Section 190(1) (b) of the Code.

5. Thirdly, even if we were to concede the argument of Mr. Dutt that the term 'police report' as used in Sub-section (4) of Section 74 must be taken in the technical sense as interpreted in Prem Chand Khettry's case, the fact that an Excise Officer submits such a police report for the purposes of taking cognizance by a Magistrate does not import all the provisions of Section 173. The report of the Police Officer is referred to in Section 173 (1) of the Code. Sub-section (4) of Section 173 of the Code provides that after forwarding such report the Officer-in-Charge has the duty of furnishing copies of the necessary documents to the accused. If the term 'police report' as used in Sub-section (4) of Section 74 in the Excise Act is taken in the technical sense, then we may say that a report submitted by an Excise Officer corresponds to a report submitted by an Officer-in-Charge of a police station under Section 173 (1) of the Code, but there is nothing in Section 74 of the Excise Act from which it may be held that the provisions of Sub-section (4) of Section 173 are also attracted. As already stated Section 74 of the Excise Act does not make Section 173 of the Code applicable to proceedings and investigations under the Excise Act.

6. We, therefore, see no reason to differ from the decision of the Division Bench referred to above, namely, 66 Cal WN 1040, where it was held that Section 173 (4) of the Code cannot be said to be applicable in a case investigated by an Excise Officer. Accepting that view, it is clear that the learned Magistrate was light in holding that the accused could not claim the copies of the statements which may have been recorded by the Excise Officer in the course of the investigation.

7. Mr. Dutt has next stated that the accused would be prepared to pay for the copies and he has referred to the provisions of Section 145 of the Evidence Act and Section 162 of the Criminal Procedure Code, from which it follows that the accused had the right to contradict a witness with reference to any previous statement, which may have been recorded in the course of the investigation, and Mr. Dutt has urged that unless the accused can get the copies of the statements they will not be in a position to exercise their power under Section 145 of the

Evidence Act or under Section 162 of the Criminal Procedure Code. Section 162 of the Criminal Procedure Code certainly applies to investigations and proceedings under the Excise Act, because Sub-section (1) of Section 74 provides that the Excise Officers may exercise all or any of the powers conferred on a Police Officer under Sections 160 to 171 of the Code, and that the said provisions of the Code shall apply accordingly. It has also been held by a Division Bench of this Court in *Jogendra Nath Gorai v. Emperor* : AIR1935 Cal621 , that the provisions of Section 162 of the Criminal Procedure Code apply to the statements which may have been recorded by an Excise Officer in the course of his investigation. But the question is, whether in view of the right to con-tradict a witness, with reference to his previous recorded statement, the accused also has the right to the copies of such statements in advance. Neither Section 162 of the Criminal Procedure Code nor Section 145 of the Evidence Act expressly makes provision for issue of copies. A statement recorded by a Police Officer in the course of the investigation or by an Excise Officer in the course of the investigation is not a public document within the meaning of Section 74 of the Evidence Act, as held in *Isab Mandal v. Queen Empress*, ILR 28 Cal 348. Accordingly the question of grant of certified copies does not arise. There remains no provision under which the accused can claim to get copies of the statements in advance even on payment of cost. No doubt the Court has a discretion 'under Section 172 of the Criminal Procedure Code and also under Section 166 of the Evidence Act to call for the police diary and any particular document, but the Court will exercise such powers only in the interest of justice. In the present case the Magistrate exercised his discretion saying that at any rate before the trial commences there is no reason to call for the statements, if any, and to grant copies; and we see no reason to interfere with that exercise of his discretion. The procedure that could be adopted is that when the trial of the case is actually taken up, the accused may ask the trying Magistrate, as each witness is put into the dock and examined-in-chief, to refer to his statement, if any, recorded by the investigating Excise Officer, and to find out whether there is any contradiction, and if there is contradiction the relevant portion may be put to the witness and marked as an exhibit, and thereupon, of course, the accused would be entitled to the copies of the relevant portions, to help them to prepare their case for argument. That stage, however, has not yet been reached; and as to granting

of the copies before the trial is taken up, we hold that the order of the learned Magistrate is quite correct.

8. This Rule is, therefore, discharged.

Niyogi, J.

9. I agree.

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