

ibrahim Ahmed Vs. Emperor

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Court : Kolkata

Decided On : Jan-27-1931

Reported in : AIR1931Cal350

Appellant : ibrahim Ahmed

Respondent : Emperor

Judgement :

S.K. Ghose, J.

1. The appellant has been convicted under Section 46 (A), Bengal Excise Act and under Section 9 (c), Opium Act and has been sentenced under the latter section, to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000, or in default to undergo further imprisonment for six months and under the former section, to undergo rigorous imprisonment for one year-the sentences of imprisonment being made to run concurrently.

2. The case for the prosecution is that on :30th July 1930, premises No. 16-H-2, Armenia Street were raided by a party of excise officers. The appellant was occupying two rooms, being the western and the eastern rooms on the north side of first floor. It is alleged that in the western room was found a quantity of opium and cocaine worth about Rs. 15,000. The defence is that the room was not in the occupation of the appellant, but that it was in the occupation of one Hasmat Khan. According to the evidence adduced by the P. W. 2, the Sub-Inspector, was the first

person to go upstairs and he found the appellant coming out of a room. This was the western room in which all the stuff was found. The appellant wanted to re-enter the room, but he was stopped by the witness and then with the permission of the witness the appellant removed his wife and children -to the eastern room. Thereafter the western room was searched in the presence of the excise officers and other witnesses. The appellant himself 'brought out the cocaine and the opium contained in different receptacles from two almirahs and the key of one of the two almirahs was also produced by the appellant. It is said that the appellant made statements of a confessional nature both before the search and during the search. It is also said that after the search he was taken to the excise barracks where his confession was recorded by an Excise Inspector, P. W. 1, and it was signed by the appellant. This confession has been admitted into evidence as Ex. 3.

3. It is contended by Mr. Gregory for the appellant that the alleged confession is not admissible in evidence. He points out that although under the Opium Act the powers of excise officers are limited, under the Bengal Excise Act the powers of such officers are virtually those of police officers holding investigation. Section 14, Opium Act (Act 1 of 1878) gives to officers of the Excise Department power to enter, arrest, and seize, on information that opium is being unlawfully kept in any enclosed place. Section 15 gives power to seize opium in open places. Section 16 provides that all searches under Section 14 or Section 15 shall be made in accordance with the provisions of the Criminal Procedure Code. Then Section 20 provides that every person arrested and thing seized, under Section 14 or Section 15, shall be forwarded without delay to the officer in charge of the nearest police station, and Section 21 provides for the report of all particulars of such arrest or seizure. On the other hand the Bengal Excise Act 5 of 1909 goes further. Section 73 prescribes that certain excise officers may investigate offences. This must be read with B. 35, Vol. 1, p. 108, Bengal Excise Manual (1918), which says that an Excise Inspector or Sub-Inspector is empowered to investigate any offence punishable under the Act. Then Section 74, Excise Act, prescribes the powers and the duties of excise officers investigating offences and the provision shows that such officers are virtually deemed to be police officers. Mr. Gregory has drawn our attention to the Bombay Abkari Act (Bombay. Act 5 of 1878).

4. Section 41 of that Act provides that certain Abkari Officers are empowered to investigate offences punishable under the Act, and these powers are not dissimilar to the powers which are conferred on excise officers under similar situation by Section 74, Bengal Excise Act. Mr. Gregory has therefore contended that the principle laid down in the full Bench decision of the Bombay High Court in the case of *Manoo Sheikh Ahmed v. Emperor* : AIR1927 Bom4 will apply. It is noteworthy that in that case Marten, C. J., distinguished the case of *Ah Foong v. Emperor* [1919] 46 Cal. 411 on the ground that that was a case under the Opium Act of 1878, and that in Bengal as opposed to Bombay there had not been conferred on excise officers powers of investigation and so on, as were conferred by the Bombay Abkari Act. Apparently the attention of the learned Judges was not drawn to the provisions of the Bengal Excise Act. In view of those provisions, I for my part do not see why the principles enunciated by the Full Bench of the Bombay High Court should not apply to the case of excise officers in Bengal. This brings me to Section 25, Evidence Act, which provides that no confession made to a police officer shall be admitted in evidence against a person accused of any offence. But it has been held that in construing that section the term 'police officer' should be read not in any strict technical sense, but according to a more comprehensive sense. See for instance, the case of *Queen v. Harribole Chunder Ghose* [1875] 1 Cal. 207 where a Deputy Commissioner of Police, though acting in his capacity as Magistrate and Justice of the Peace, was held to be a police officer within the meaning of Section 25.

5. On principle also the position of a police officer cannot be distinguished from that of an excise officer with regard to an offence under the Excise Act, because an excise officer is also interested in the conviction of the accused and 'in a position to dominate him. Outwardly also there is hardly anything to distinguish the one class of officers from the other, for they wear uniforms which are not dissimilar and take part in the investigation in the same way. I am aware that in some cases the Calcutta High Court has taken the view that an excise officer is not a police officer and therefore Section 25, Evidence Act does, not apply to the case of a confession made to an excise officer. This view was taken in the following cases, viz., *Rukumali v. Emperor* [1918] 19 Cr. L.J. 524, *Ah Toong v. Emperor* [1919] 46 Cal. 411, *Harbhanjan Sao v. Emperor* : AIR1927 Cal527 and *Tura Sardar v.*

Emperor. The first two are decisions under the Opiun Act, the last two are made under the Excise Act. In Harbhajan Sao v. Emperor Suhrawardy and Mitter, JJ., followed the decision in Ah Foong's case. In the last case of Tura Sardar v. Emperor : AIR1930 Cal710 , Suhrawardy and Costello, JJ., referred to the previous cases and accepted the view that the point was

settled by authorities of this Court and as the law now stood an excise officer was not a police officer within the meaning of Section 25, Evidence Act.

6. In the first three cases it seems that the attention of the learned Judges was not directed to those provisions of the Bengal Excise Act which confer police powers on excise officers. In the last case the learned Judges referred to Section 74, Bengal Excise Act, but they held that in that case the question did not arise having regard to the facts of that case. With great respect, I disagree with the decision in these cases in so far as they lay down that a confession made before: an excise officer during investigation is admissible in evidence and I prefer to follow the principles laid down by the Bombay High Court in the case of Nannoo Shaikh Ahmed v. Emperor.

7. I may also mention that personally speaking, I attach no importance to the confession recorded by the excise officer (Ex. 3). It is not a confession which has been recorded by a Magistrate with the safeguards that are prescribed by Section 162, Criminal P.C. It will be noted that these safeguards have been considered' so important by this Court that it has prescribed a form for the use of the magistracy, so as to ensure that on the face of the record would appear those factors which would enable the Court to see that the confession was a perfectly voluntary one. Neither the document Ex. 3, nor the evidence that has been given in 'support of it, goes to show that the confession has not been caused by inducement or threat or promise, and is therefore not irrelevant under Section 24, Evidence Act.

8. Having regard to the decisions in the Calcutta cases referred to above, it would have been necessary to make a reference-to the Full Bench on the point as to the admissibility of the confession. But in the preeent case we have taken the view that upon the evidence, apart from the alleged confession, the appeal must fail. Therefore reference to a Full Bench is not required. (After considering the

evidence, his Lordship proceeded). Therefore upon the evidence apart from the alleged confession, it must be held that the appellant has been rightly convicted. The sentence is also appropriate. The appeal must stand dismissed. The appellant if on bail must surrender and serve out the remainder of, the sentence.

Lort-Williams, J.

9. I agree.

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