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**(1989) 07 CAL CK 0037**

**Calcutta High Court**

**Case No:** None

Abdul Razzak alias Raju

APPELLANT

Vs

Sudip Kr. Dutta Gupta

RESPONDENT

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**Date of Decision:** July 3, 1989

**Acts Referred:**

- Constitution of India, 1950 - Article 20
- Criminal Procedure Code, 1973 (CrPC) - Section 100, 162, 173, 190, 437
- Evidence Act, 1872 - Section 25, 50
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 50, 52, 53

**Citation:** (1989) CriLJ 2007

**Hon'ble Judges:** Amal Kumar Chatterjee, J

**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

Amal Kumar Chatterjee, J.

The petitioner is facing a trial before a Judge, City Sessions Court, Calcutta for an offence punishable u/s 20(b)(iii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and in course of such trial the prosecution wanted to examine as a witness one Sri Debi Prosad Nandigrami, an Intelligence Officer of the Narcotic Control Bureau with a view to prove that the petitioner had made a confessional statement before such officer. The petitioner objected to the examination of the said witness on the ground that he having been invested with the powers of an Officer-in-Charge of a police station for the investigation of the offence under the Act in accordance with the provisions of Section 53 thereof, he must be regarded as a police officer and as such any confession made to him was hit by the provisions of Section 25 of the Evidence Act and could not be proved against the petitioner. The learned Judge has found against the petitioner and hence he has come up in revision.

2. The whole question, therefore, which arises for determination is whether Sri Nandigrami by reason of the power given to him u/s 53 of the Act, can be regarded as a police officer within the meaning of Section 25 of the Evidence Act. The expression police officer as occurring in Section 25 of the Evidence Act had been interpreted in a large number of cases by different High Courts with some difference of opinion but it is not necessary to refer to those decisions, in view of the pronouncement of the Supreme Court in [The State of Punjab Vs. Barkat Ram](#), in which it has been laid down that the words police officer are not to be construed in a narrow way but have to be construed in a wide and popular sense but not so wide as to include persons on whom only some of the powers exercised by the police are conferred. Once this position is accepted there is no escape from the conclusion that an officer invested with the powers of an Officer-in-charge of a police station u/s 53 of the Act cannot be regarded as a police officer because he has at least no power to file a charge-sheet before the Magistrate after completion of investigation u/s 190 of Cr. P.C. Magistrate can take cognizance, inter alia, upon a report in writing made by a police officer and for the purpose of this provision a police officer can only be a police officer so called as the scheme of the Cr. P.C. show : and consequently if an officer invested with power u/s 53 of the Act wants to initiate a prosecution, he will have to make a complain before a competent Magistrate to enable him to take cognizance. Reference may be made in this connection to the decision of the Supreme Court in [Badku Joti Savant Vs. State of Mysore](#), in which case it was held that a Central Excise Officer, even though invested with the powers of an Officer-in-charge of a police station u/s 21(2) of the Central Excises and Salt Act, had no power to submit a charge-sheet before a Magistrate and could only file a complaint. On a parity of reasoning it can be held, as already stated, that an officer invested with the powers of the Officer-in-charge of a police station u/s 53 of the Act also cannot file a charge-sheet but can only make a complaint for starting a prosecution. In [Alok Badridas Agrawal Vs. B.M. Bhatt, Superintendent, Central Excise and Another](#), a learned Judge of Gujarat High Court has also taken the same view. Besides this decision the learned advocate for the opposite party has also cited a Bench decision of Delhi High Court, not yet reported, in Kripal Mohan Virmani v. B.D. Mishra, Intelligence Officer Criminal Misc. (M) 1451 of 1987 along with Criminal Revision 170 of 1987 and Criminal Misc. (M) 1258 of 1987 (Reported in (1989) 20 ECC 28 in which their Lordships held, following Badaku Joti's case (supra), that there is nothing in the Act to suggest that an officer empowered u/s 53 thereof can make a report u/s 173 of the Cr. P.C. and further that such an officer is not a police officer within the meaning of Section 25 of the Evidence Act. Thus the consistent view of at least two other High Courts is that an officer invested with the powers u/s 53 of the Act. cannot be regarded as a police officer and no decision to the contrary by any High Court has been brought to my notice.

3. In some other respects also power of an officer empowered u/s 53 of the Act differ substantially from that of a police officer under the Cr. P.C. An

Officer-in-charge of a police station can under certain circumstances release an accused on bail as laid down in S.437(2) of Cr. P.C. occurring in Chap. XXXIII of the Code, of course after recording reasons as provided in Sub-section 437(4) of the Code. This power is not coexistent with the power of making an investigation under Chap. XII of the Cr. P.C. and, therefore, in the absence of a corresponding provision in the Act to enable an officer invested with the powers of an Officer-in-charge of a police station u/s 53 thereof to grant bail, such an officer cannot undoubtedly release an accused on bail. Thus, again it is found that such an officer does not possess all the powers of the Officer in-charge of a police station and cannot, therefore, be regarded as a police officer within the contemplation of Section 25 of the Evidence Act.

4. Now reference may be made to the decision of the Supreme Court in [Raja Ram Jaiswal Vs. State of Bihar](#), . In this case their Lordships were seized with the question whether an Inspector or a Sub-Inspector of Excise empowered u/s 77(2) of Bihar and Orissa Excise Act to investigate any offence punishable under that Act could be regarded as a police "officer within the meaning of Section 25 of the Evidence Act. The decision in this regard will be noticed later on but for the present it may be noted that Their Lordships referred to Barkat Ram's case (1962 Cri LJ 217) (supra) and observed that the words "Police Officer" according to the Supreme Court were not to be construed in so wide sense as to include persons on whom only some of the powers exercised by the police were conferred. However, it has been observed in the majority judgment that what is pertinent to bear in mind for the purpose of determining as to who could be regarded a police officer for the purpose of Section 25 of the Evidence Act was not the totality of the powers which an officer enjoys but the kind of power which the law enables him to exercise and the test would be whether the powers were such which would tend to facilitate an obtaining by him of a confession from a suspect or a delinquent. Thus Their Lordships took the view that if an officer possessed such powers which enable him to exercise a kind of authority over the persons arrested, then any confession made to such an officer would be inadmissible because of the suspicion about voluntariness attaching to the statement. A comparison of powers which can be exercised by an Officer-in-charge of a police station under the Cr. P.C. and an officer under the Act may, therefore, be useful to decide whether the latter can influence the conduct of an accused. The existence of the power to grant bail in an Officer-in-charge of a police station as stated above itself enables him to exercise authority over the arrested person. Then again it is found that an officer under the Act about to search a person is required u/s 50 thereof to take such person, if he so demands, to the nearest gazetted officer of the prescribed departments or to the nearest Magistrate without unnecessary delay and if such an option is exercised, then the question whether he should be searched or not will be decided by the gazetted officer or the Magistrate, as the case may be. On the other hand a police officer making a search u/s 100(3) of the Cr. P.C. can himself conduct the search and is under no obligation to take the person before

any other authority. This requirement of Section 50 of the Act also serves as a check on the authority of an officer under the Act exercising over a suspect. It is also noteworthy that an officer under the Act arresting a person is under an obligation to inform him of the grounds for arrest as laid down in Section 52 of the Act while an Officer-in-charge of a police station is required to communicate the grounds only in case of an arrest without warrant, as provided in Section 50 of the Cr.- P.C. These provisions effectively stand in the way of exercising authority by an officer invested with the powers of an Officer-in-charge of a police station u/s 53 of the Act over an arrested person. Thus it is found that whatever test is applied totality of powers as pronounced by the Supreme Court in Barkat Ram's case (1962 Cri LJ 217) (supra) or the kind of powers as observed in the, majority judgment in [Raja Ram Jaiswal Vs. State of Bihar](#), it must be held that an officer invested with the powers of an Officer-in-charge of a police station u/s 53 of the Act cannot be regarded as a police officer and so in the instant case the supposed confessional statement made to Shri Nandigrami cannot be excluded on the ground that it is hit by the provision of Section 25 of the Evidence Act.

5. The learned advocate for the petitioner has heavily relied upon the decision in Raja Ram Jaiswal's case (supra) in which it has been held by a majority judgment (Raghubir Dayal J. dissenting) that an Excise Inspector or a Sub-Inspector empowered by the State Government u/s 77(2) of the Bihar and Orissa Excise Act was a police Officer and as such a confession made to them was inadmissible in evidence. The Bihar and Orissa Excise Act is remarkable for certain peculiar provisions such that the analogy sought to be drawn by the learned advocate for the petitioner does not apply in the instant case. Section 77(2) of the said Act enables the . State Government to empower an Excise Officer to investigate an offence and Section 77(3) lays down that the area to which an Excise Officer empowered u/s 77(2) is appointed, shall be deemed to be a police station and such officer shall be deemed to be the Officer-in-charge of such station. Section 77(4) lays down that after completion of investigation by a duly empowered Excise Officer, if it appeared that there was sufficient evidence to justify the forwarding of an accused to Magistrate, the Investigating Officer shall submit a report which shall be deemed to be a police report within the meaning of Code of Criminal Procedure. There is no corresponding provision in the Act and, therefore, the decision in [Raja Ram Jaiswal Vs. State of Bihar](#), that an officer empowered u/s 77(2) of the Bihar and Orissa Excise Act should be regarded as a police officer badly comes to the aid of the petitioner. In [State of U.P. Vs. Durga Prasad](#), which, was a case under the Railway Property (Unlawful Possession) Act reliance was placed by the accused on Raja Ram Jaiswal's case (supra) to support an argument that an enquiry conducted by an officer of the Railway Protection Force u/s 8(1) of the said Act should be deemed to be an investigation for the purposes of Section 162, of Cr. P.C. It was so argued because Section 8(2) of the said Act provided that for the purposes of arrest by an officer of the Railway Protection Force of any person for an offence punishable under the said

Act and for the purpose of an enquiry into the charges, the officer of the Railway Protection Force may exercise the same powers and shall be the subject to the same provisions as the Officer-in-charge of a police station may exercise and is subject to under the Cr. P.C. when investigating a cognizable offence. Their Lordships rejected the contention and distinguished the decision in [Raja Ram Jaiswal Vs. State of Bihar](#), because of the peculiar provisions of the Bihar and Orissa Excise Act to which reference has already been made. In [Badku Joti Savant Vs. State of Mysore](#), also the same distinguishing features weighed with their Lordships to repel the contention raised on behalf of the accused that a statement made to the Deputy Superintendent of Customs and Excise was hit by Section 25 of the Evidence Act. In view of such pronouncements by the Apex Court of the country the petitioner cannot successfully rely upon the decision in Raja Ram Jaiswal's case for the contention that the statement made to Sri Nandigrami was hit by the provision of Section 25 of the Evidence Act.

6. The present revisional application has been resisted by the opposite party 1, the Intelligence Officer of the Narcotic Control Bureau who had lodged the complaint against the petitioner. The State impleaded as opposite party No. 2 has, however, supported the petitioner and thus seems to have reversed the stand taken by it in the court below. Mr. Dey, the learned advocate for the state has raised the same points as argued by the learned advocate for the petitioner and has even contended that the alleged statement made to Shri Nandigrami was also hit by Article 20(3) of the Constitution. This Article provides that no person accused of any offence shall be compelled to be a witness against himself and clearly, therefore, the protection under; Article 20(3) is not available if the incriminating statements are made during an enquiry for the simple reason that at that time, the maker of the statement does not assume the character of a person accused of an offence. Of any authority is needed in this regard, reference may be made to the decision of the Supreme Court in [Romesh Chandra Mehta Vs. State of West Bengal](#), quoted with approval in [Balkishan A. Devidayal Vs. State of Maharashtra](#), of which no note was apparently taken by the learned advocate appearing for the State. Therefore, Article 20(3) of the Constitution does not appear to be relevant in this case.

7. For the reasons stated above I find no merit in the revisional application which is, therefore, rejected. All interim orders are vacated. The learned Judge is directed to proceed with the trial with utmost expedition.