

Harbhanjan Sao (Sha) Alias Bechan Sha Vs Emperor

Court: Calcutta High Court

Date of Decision: Jan. 27, 1927

Citation: 102 Ind. Cas. 547

Hon'ble Judges: Suhrawardy, J; Mitter, J

Bench: Division Bench

Judgement

1. This Rule has been obtained on three grounds, two of which relate to the legality of the search made by the Excise Officer and the third to the

reception in evidence of an alleged confession made by the accused petitioner. The case for the prosecution is that the petitioner lived in premises

No. 57/2, Baloram Ghose's Lane. On receipt of certain information the Excise Sub-Inspector raided the house and found in two rooms excisable

articles such as French liquor and cocaine. He held the search in the presence of three witnesses two of whom have been examined in the case.

These witnesses deny that they were present during the whole search or that certain articles said to have been found in the different places were

found in those places in their presence. The learned Presidency Magistrate has suspected the veracity of these witnesses and has convicted the

petitioner for an offence u/s 46 of the Bengal Excise Act (V of 1909) and sentenced him to three months' rigorous imprisonment. The Magistrate

in his explanation has submitted that he did not rely either upon the search or upon the confession of the petitioner but the articles were found in the

premises which was for the time being in possession of the petitioner and u/s 47 of the Excise Act the petitioner having failed to account for such

possession he was convicted as aforesaid. Now with regard to the grounds upon which this Rule has been issued. As to the search not having been

in accordance with Sections 102 and 103, Criminal Procedure Code, it is contended on behalf of the Crown that these sections do not apply to

the search made under the Excise Act. We think that there is a great deal of force in this contention. Section. 1, Clause (2), Criminal Procedure

Code, says that nothing in the Code shall affect any special or local law now in force, or any special jurisdiction or power conferred. Section 5(2)

says all offences under any other law (other than the Penal Code) shall be investigated, inquired into, tried and otherwise dealt with according to

the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, etc., etc.

In view of these provisions, if we find that there is a special provision in the Excise Act relating to search made under the Act, it is clear that the

provisions of Sections 102 and 103 do not apply to searches under the Excise Act. In the first place, the search under the Excise Act can be made

by persons other than Police Officers. Chapter IX of the Excise Act-details the powers of different persons to make the search. It enables an

officer or person empowered under the Excise Act to inspect and search any person or any vessel, vehicle, etc., in which he may reasonably

suspect any excisable articles to be. Then again the Collector or any Excise Officer may institute a search without a warrant in emergent cases and

for that purpose enter or search any place by day or night and may seize anything found therein which he has reason to believe to be liable to

confiscation under the Act. There is nothing in this section to show that the search must be made under the provisions of the Criminal Procedure

Code. Section 16 of the Opium Act (I of 1878) expressly says that a search made u/s 14 or Section 15 of that Act shall be made in accordance

with the provisions of the Criminal Procedure Code. The absence of any such provision in the Excise Act lends great support to the argument that

it was not the intention of the Legislature to extend the special provisions relating to search under the Criminal Procedure Code to searches held

under the Excise Act. But it is usual that the Excise Officers making searches under the Act try to observe the procedure laid down in the Criminal

Procedure Code to secure evidence and in this case the Excise Officer took with him three witnesses to witness the search. Now, if these

witnesses in Court deny that they saw the entire search, the mere fact of such denial does not matter if the Magistrate believes that it was properly

held. Two witnesses have been examined in the case. They signed the search list in which it is mentioned what articles were found in which places.

In Court they denied that they saw these articles having been discovered in the places mentioned in the list. The Magistrate has the right to

disbelieve the witnesses and to hold that there was a search in which those articles were found. In his statement the petitioner said that he came into

the house at 12 noon, the search having been held at 2-30 p. M. on that day. He did not know how the liquor and the cocaine came to be there.

The Magistrate on a review of the evidence has found, and we think correctly found, that the story that the petitioner came on that day is false and

that he was there for sometime before the date of the search. Having found this, the only conclusion arrived at by him is that the petitioner was in

possession of the articles found in the house and he having failed to account for such possession was liable to conviction.

2. Now, with regard to the other point, namely, that the confession of the petitioner was wrongly admitted in evidence the petitioner in his

statement says that he made the confession under a threat by the Excise Officer that if he did not say to whom the things belonged his wife would

be dragged to the Police Station. One of the search witnesses supports him in this statement, The Magistrate in his explanation has said that he

attached no value to the alleged confession and it appears from his judgment that he has not even referred to it when discussing the evidence for the

prosecution. It seems that when the Excise Officer was examined he spoke of this statement by the accused to him and it was rightly admitted in

evidence because, as has been held in the case of *Ah Foong Chinaman v. Emperor* 48 Ind. Cas. 504 : 22 C.W.N. 834 : 28 C.L.J. 105 : 20 Cr.

L.J. 24 : 46 C. 411 an Excise Officer is not a Police Officer and, therefore, Section 25 of the Evidence Act does not apply; and it was admitted in

evidence before any evidence was given or statement made about the alleged threat. So the Magistrate was not wrong in admitting the confession

in evidence and he was right in not considering it in coming to his conclusions.

3. All the grounds having failed this Rule must be discharged. The petitioner will surrender to his bail and serve out the remainder of the sentence.