State of U. P.

Vs

Durga Prasad

Criminal Appeal No. 156 of 1972

(H. R. Khanna, Y. V. Chandrachud JJ)

23.08.1974

JUDGMENT

CHANDRACHUD, J. -

1. This appeal by special leave raises questions regarding the interpretation of the provisions of the Railway Property (Unlawful Possession) Act, XXIX of 1966. The main question for decision is whether the inquiry which an officer of the Railway Protection Force holds under Section 8(1) of the Act is an investigation within the meaning of the Code of Criminal Procedure, 1898. If so, statements recorded during the course of the inquiry would be inadmissible in evidence by reason of the injunction contained in Section 162 of the Code. A further question which requires consideration is whether the entire trial is vitiated if signatures of witnesses are obtained on the statements made by them during the course of the inquiry.

2. The respondent Durga Prasad was working as a Turner in the Railway Workshop at Gorakhpur. On April 2, 1968 he was found in possession of a steel rod and two pieces of moulded brass shells belonging to the Railway. After the preparation of a recovery memo the respondent was forwarded to the Railway Protection Force Post where a case was registered against him under Section 3(a) of the Act.

3. Gajai Singh, Sub-Inspector, Railway Protection Force inquired into the case under Section 8(1) of the Act, during the course of which he recorded the statements of three persons : Rakshak Indra Deo Yadav, Rakshak Jagannath Pandey and R. K. Nandi. The statements were read over these persons and their signatures were obtained thereon. Two others, G. S. Tripathi and Kamla Kant Yadav wrote out their statements in their own hand and handed over the same to Gajai Singh.

4. The respondent pleaded not guilty but the learned Special Railway Magistrate, First Class, Gorakhpur convicted him under Section 3(a) of the Act and sentenced him to undergo rigorous imprisonment for fifteen months. The judgment was confirmed in appeal by the learned Civil and Sessions Judge, Gorakhpur.

5. The respondent filed a revision application in the High Court of Allahabad which set aside the judgment of the Sessions Court and acquitted the respondent. The High Court, has taken the view that the inquiry contemplated by Section 8(1) of the Act is an investigation for the purposes of the purposes of the Criminal Procedure Code, that Section 162 of the Code would therefore apply, that the Inquiry Officer had contravened Section 162 by obtaining signatures of witnesses on the statements made by them before him during the inquiry and since those statements were brought on the record of the trial and were put to the witnesses in their examination-in-chief, the entire trial was

vitiated. We have to examine the correctness of this view in this appeal.

6. Section 8 of the Act reads thus :

> 8. (1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.
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> (2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case;

Provided that -

> (a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;
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> (b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

7. Section 2(a) defines "Force" as the Railway Protection Force constituted under Section 3 of the Railway Protection Force Act, 1957. Section 2(c) defines an "officer of the Force" to mean an officer of and above the rank of Assistant Sub-Inspector appointed to the Force, including a superior officer. Under Section 2(e) a "superior officer" means an officer appointed under Section 4 of the Railway Protection Force Act, 1957 and includes any other officer appointed by the Central Government as a superior officer of the Force.

8. Section 5 provides that notwithstanding anything contained in the Code of Criminal Procedure an offence under this Act shall not be cognizable. By Section 6 of the Act power is given to the concerned officers to arrest without an order from a Magistrate and without a warrant any person who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned. Section 7 requires that every person arrested for an offence punishable under the Act must be forwarded without delay to the nearest officer of the Force.

> 9. Section 9(1) of the Act empowers an officer of the Force to summon any person whose attendance he considers necessary either "to give evidence or to produce a document". By sub-section (3) of Section 9 persons so summoned are bound to attend either in person or by an authorised agent and they are "bound to state the truth upon any subject respecting which they are examined or make statements". By Section 9(4) every such inquiry is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Penal Code.

10. Section 11 provides that all searches and arrests made under the Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure. Section 14 provides that "the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time in force."

11. In the face of these provisions, the inquiry conducted by an officer of the Railway Protection Force under Section 8(1) of the Act cannot be deemed to be an investigation for the purposes of Section 162, Code of Criminal Procedure. The scheme of the Act is in important respects different from the scheme of the Code and there is intrinsic evidence in the Act to show that the provisions of the Code cannot proprio vigore apply to inquiries under Section 8(1) of the Act. See, for example, two provisions of the Act which to a student of the Code must strike as a glaring contradiction in terms. Section 6 of the Act confers power on officers and members of the Force to arrest without an order from a Magistrate and without a warrant any person concerned in an offence under the Act or reasonably suspected of being so concerned. Applying the dictionary of the Code it should have followed from Section 6 of the Act that an offence under the Act is cognizable. Section 4(f) of the Code defines a cognizable offence as one for which a police-officer can effect an arrest without warrant. The complementary part of this definition contained in Section 4(n) of the Code defines a non-cognizable offence as one for which a police-officer may not arrest without warrant. But Section 5 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, an offence under the Act shall not be cognizable.

12. The exclusion of an important provision of the Criminal Procedure Code in matters arising under the Act is not only reflected in Section 5 which deals but with a facet of criminal trials, but the exclusion is more in evidence in the provisions of Section 14 of the Act. Under that section the provisions of the Act take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Each and every provision of the Code cannot therefore be superimposed on or read into the Act. The Act would prevail over the Code if on any matter there is inconsistency between the two. In fact, Section 5(2) of the Code itself lays down that offences under any law other than the Penal Code shall be investigated according to the provisions of the Code, but subject to any enactment for the time being in force regulating the manner of investigating such offences.

13. Provisions governing inquiries under Section 8(1) of the Act are either expressly or by necessary implication inconsistent with some of the outstanding provisions of the Code governing investigations under Chapter XIV, called "Information to the Police and their Powers to investigate". Whereas Section 8(1) speaks of "inquiry" by an officer of the Force, Sections 155 and 156 of the Code speak of the power to "investigate" into non-cognizable and cognizable cases respectively. Labels, of course, are not decisive of the content of a phrase but the different in terminology is purposeful. Section 9(1) of the Act confers on officers of the Force the power to summon any person whose attendance is necessary either "to give evidence" or to produce a document. Section 160 of the Code empowers a police-officer making an investigation to require by a written order the attendance of a person who appears to be acquainted with the circumstances of the case. By Section 9(3) of the Act, persons summoned to appear in the inquiry are bound to attend either personally or through an authorised agent and they are under an express obligation "to state the truth" on any subject respecting which they are examined. Section 160 of the Code also makes it obligatory for persons to appear before the Investigating Officer if he requires their presence but Section 161 does not cast on such person the obligation which Section 9(3) of the Act casts, namely to state the truth. This is not to suggest that the Code provides for a lawful option to lie but the two parallel provisions governing the obligations of persons summoned to appear highlight the basic difference in the

nature of an inquiry under the Act and an investigation under the Code. Section 161(2) casts but a limited obligation on persons required to appear before an Investigating Officer "to answer all questions" relating to the case, other than a certain class of self-incriminating questions. Section 161(2) of the Code of 1882 contained an injunction that persons summoned to appear by the Investigating Officer must answer "truly" the questions put to them but reverting to the language of the Code of 1872, the Code of 1898 omitted the word "truly". A provision similar to that in Section 9(3) of the Act is, however, to be found in Section 175(1) of the Code by which persons summoned to appear in the inquest proceedings are bound to answer truly all questions put by the Investigating Officer except a certain class of self-incriminating questions.

14. The importance of the obligation cast by Section 9(3) of the Act that persons summoned to appear before an officer of the Force must state the truth consists principally in the consequence that the breach of that obligation constitutes an offence under Section 193 of the Penal Code which prescribes punishment, inter alia, for intentionally giving false evidence in any stage of a judicial proceeding. Under the relevant part of Section 191, Penal Code, whoever being legally bound by an express provision of law to state the truth makes any statement which is false and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. It is not necessary that the statement should have been made on oath. By Section 9(4) of the Act very inquiry under Section 8(1) is deemed to be a "judicial proceeding" within the meaning of Section 193 of the Penal Code. The obligation to state the truth, attracting for its breach a penal consequence must necessarily imply in the officere conducting the inquiry the power to obtain the signature of the person on the statement made by him; or else, in a prosecution under Section 193, Penal Code, it would be an easy defence to deny the very making of the statement and thereby to escape the punishment. In order that prosecution under Section 193 may not be rendered illusory and the duty to state the truth should have a real and practical sanction for its enforcement, the officer conducting the inquiry must have the right to obtain the signature of the person making the statement.

15. That creates an inconsistency between the Act and code for, whereas an officer conducting an inquiry under the Act may and indeed ought to obtain the signature of witnesses on their statements, Section 162(1) of the Code provides : "No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; .....". In view of the provision contained in Section 14 of the Act must prevail over the Code.

16. The reason of the rule that the statement made to a police-officer in the course of investigation shall not be signed by the person making it is contained in the very same section, namely Section 162(1) of the Code, which provides that such a statement shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when the statement was made, except for the limited purpose of contradicting a witness called for the prosecution, in the manner provided by Section 145 of the Evidence Act. If the statement is inadmissible at the trial as substantive evidence and if an untrue statement made to a police-officer in the course of an investigation attracts no penal consequence, it is of no great significance to obtain the signature of the person making the statement. Statements made under Section 8(1) of the Act have different characteristics and are neither subject to the disability of being inadmissible nor are they immune from the sweep of Section 193 of the Penal Code.

17. Relying on Section 8(2) of the Act which provides that an officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police-station

may exercise and is subject to under the Code when investigating a cognizable case, Counsel for the respondent argued that the object of this provisions could only be to assimilate inquiries under the Act with investigations under the Code and therefore Section 162 of the Code would govern the inquiries also. This argument overlooks the opening words of Section 8(2). The power spoken of in that sub-section is conferred "For this purpose", power spoken of in that sub-section is conferred "For this purpose", that is to say, for the purpose of the inquiry under Section 8(1) and must be limited to that purpose.

18. The right and duty of an Investigating Officer to file a police report or a charge-sheet on the conclusion of investigation is the hallmark of an investigation under the Code. Section 173(1)(a) of the Code provides that as soon as the investigation is completed the officer-in-charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. The officer conducting an inquiry under Section 8(1) cannot initiate court proceedings by filing a police report as is evident from the two Provisos to Section 8(2) of the Act. Under Proviso (a), if the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he shall either admit the accused to bail to appear before a Magistrate having jurisdiction in the case or forward him in custody to such Magistrate. Under Proviso (b), if it appears to the officer that there is no sufficient evidence or reasonable ground of suspicion against the accused, he shall release him on a bond to appear before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his superior officer. The duty cast by Proviso (b) on an officer of the Force to make a full report to his official superior stands in sharp contrast with the duty cast by Section 173(1)(a) of the Code on the Officer-in-charge of a police-station to submit a report to the Magistrate empowered to take cognizance of the offence. On the conclusion of an inquiry under Section 8(1), therefore, if the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he must file a complaint under Section 190(1)(a) of the Code in order that the Magistrate concerned may take cognizance of the offence.

19. Thus an officer conducting an inquiry under Section 8(1) of the Act does not possess all the attributes of an officer-in-charge of a police station investigating a case under Chapter XIV of the code. He possesses but a part of those attributes limited to the purpose of holding the inquiry.

20. That the Inquiry Officers cannot be equated generally with police officers is clear from the object and purpose of The Railway Protection Force Act, XXIII of 1957, under which their appointments are made. The short title of that Act shows that it was passed in order "to provide for the constitution and regulation of a Force called the Railway Protection Force for the better protection and security of Railway property". Section 3(1) of the Act of 1957 empowers the Central Government to constitute and maintain the Railway Protection Force for the better protection and security of Railway property. But Section 10, the Inspector-General and every other superior officer and member of the Force "shall for all purposes be regarded as Railway servants within the meaning of the Indian Railways Act, 1890, other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on Railway servants by or under that Act." Section 11 which defines duties of every superiors officer and member of the Force provides that they must promptly execute all orders lawfully issued to them by their superior authority protect and safeguard Railway property; remove any obstruction in the movement of Railway property and do any other act conducive to the better protection and security of Railway property. Section 14 imposes a duty on the superior officers and members of the Force to make over persons arrested by them to a police officer or to take them to the nearest police station. These provisions are incompatible with the position that a member of the Railway Protection Force holding an inquiry under Section 8(1) of the Act can be deemed to be a

police officer-in-charge of a police station investigation into an offence. Member of the Force are appointed under the authority of the Railway Protection Force Act, 1957, the prime object of which is the better protection and security of Railway property. Powers conferred on members of the Force are all directed towards achieving that object and are limited by it. It is significant that the Act of 1957, by Section 14, makes a distinction between a member of the Force and a police officer properly so called.

21. Reference may now be made to few decisions of this Court. In State of Punjab v. Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217), the question which fell for consideration was whether a Customs Officer either under the Land Customs Act, 1924 or the Sea Customs Act, 1878 is a police officer within the meaning of Section 25 of the Evidence Act. The majority took the view that though the expression "police officer" occurring in Section 25 had to be construed in a wide and popular sense, Central Excise Officers are not police officers and therefore confessions made to them are not hit by Section 25.

22. In Badku Joti Savant v. State of Mysore ((1966) 3 SCR 698 : AIR 1966 SC 1746 : (1967) 1 SCJ 701), a similar question arose before a Bench of five Judges of this Court with references to the provisions of the Central Excise and Salt Act, 1 of 1944. Sections 21(1) and (2) of that Act are in material respects identical with the provisions of Sections 8(1) and (2) of the Act. A unanimous Court held that though under Section 21(2) the Central Excise Officer has the powers of an officer-in-charge of a police station when investigating a cognizable case, that power was conferred for the purpose of the inquiry under Section 21(1). Considering the main purpose of the Central Excise and Salt Act it was held that the Excise Officer was not a police officer within the meaning of Section 25 of the Evidence Act. Counsel for the respondent tried to distinguish this decision on the ground that the application of Section 162 of the Code was not considered there. We see no substance in this contention because if after excluding Section 25 of the Evidence Act, Section 162 of the Code was still applicable, there was no purpose in considering whether the confessional statements were hit by Section 25 of the Evidence Act.

23. The decision in Raja Ram Jaiswal v. State of Bihar ((1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) on which the respondent relies was considered and distinguished in Badku Joti Savant's case (supra). Raja Ram Jaiswal's case involved the interpretation of Section 78(3) of the Bihar and Orissa Excise Act, 1915 which provided in terms that :

for the purpose of Section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under Section 77, sub-section (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.

There is no provision in the Act before us corresponding to Section 78(3) of the Bihar Act and therefore the decision is distinguishable for the same reasons for which it was distinguished in Badku Joti Savant's case.

24. The High Court was therefore in error in holding that the statement made during the inquiry under Section 8(1) of the Act are on par with statements made during the course of an investigation, that Section 162 of the Code applied with full force to the inquiry proceedings and that in taking signatures of witnesses on the statement made by them the Inquiry Officer had committed a flagrant violation of Section 162 of the Code. We may add that apart from the statement made by witnesses during the enquiry which were brought on the record of the case by the learned Magistrate, there was before him the evidence of the witnesses who were examined in the Court and therefore the

entire trial could in any case not be said to have been vitiated. At best the High Court should have excluded from consideration what it thought was inadmissible in evidence.

25. In the result we set aside the judgment of the High Court and restore that of the learned Civil and Sessions Judge, Gorakhpur. The evidence shows clearly that the respondent was in possession of Railway property and had thereby committed an offence under Section 3(a) of the Act.

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