

SUPREME COURT OF INDIA

Abdul Rashid

Vs.

State of Bihar

Crl.A.No.653 of 2000

(G. B. Pattanaik and U. C. Banerjee JJ.)

11.01.2001

ORDER

1. This appeal is directed against the conviction and sentence recorded by the learned single Judge of Patna High Court arising out of a case under the provisions of *Narcotics Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as the "Act"). The appellant Abdul Rashid was found to be in company with the co-accused Mohd. Islam from whose possession the offending article was recovered but the conviction of the appellant is based upon the alleged confessional statement made by him to the Superintendent of Excise under the provisions of Bihar and Orissa Excise Act as well as the co-accused statement stating therein that he was merely a carrier and the offending article belongs to the present appellant. Before the High Court, the learned Public Prosecutor fairly stated that the statement of the appellant made to the Superintendent of Excise would not be admissible in view of the majority judgment of this Court in *Raja Ram Jaiswal v. State of Bihar*¹. But all the same the High Court was of the opinion that since the investigating officer had the prior information of the fact that the accused persons are coming with the offending article and since the offending article was recovered from the co-accused and the appellant was found at that point of time, which is further corroborated by the statement of the co-accused, the conviction is well merited. When this case was listed for admission after notice, Mr. B. B. Singh, the learned counsel appearing for the State of Bihar raised a contention that the confessional statement of the appellant made to the Superintendent of Excise under the *Bihar and Orissa Excise Act, 1915* would be admissible in evidence in view of the Judgment of this Court in *Pon Adithan v. Dy. Director, Narcotics Control Bureau, Madras*², and it is for this reason we have granted leave to examine this question. Undoubtedly, therefore, the two items of evidence which could be utilised against the appellant to bring home the guilt is the so-called confessional statement of the appellant to the Superintendent of Excise and the confessional statement of the co-accused. If the former is inadmissible in evidence and as such cannot be taken into consideration, no conviction could be sustained on the statement of the co-accused which cannot form the sole basis of a conviction. This Court in the case of *Raja Ram v. State of Bihar*³, considered the relevant provisions of the Bihar and Orissa Excise Act and the powers conferred upon an Excise Officer under the said Act and ultimately came to the conclusion that the said power is not analogous to that of a Customs

Officer under the provisions of the Sea Customs Act. The Court also further came to the conclusion that in view of the positive provisions contained in sub-section (3) of Section 78 and the powers which an Excise Officer exercises under the provisions of the Bihar and Orissa Excise Act, the conclusion is irresistible that the said officer is a Police Officer for the purpose of Section 25 of the Evidence Act, and therefore, a confessional statement of an accused made to such Excise Officer would be inadmissible in evidence. This decision was considered in a later decision of this Court in *Badaku Joti Savant v. State of Mysore*⁴. In that case, the statement made before a Deputy Superintendent of Customs and Excise under the Central Excises and Salt Act was for consideration and the Court held that the said Deputy Superintendent of Customs and Excise is not a Police Officer within the meaning of Section 25 of the Evidence Act. Wanchoo, Judge as he then was took into consideration the two lines of authorities of different High Courts on the subject and also considered the decision of this Court in Raja Ram and the scheme of the provisions of the Bihar and Orissa Excise Act, 1915. The Court then drew up a distinction between a Central Excise Officer exercising power under the provisions of Central Excises and Salt Act and an Excise Officer under the Bihar and Orissa Excise Act and ultimately came to the conclusion that the Deputy Superintendent of Customs and Excise would not be a Police Officer for the purpose of Section 25 of the Evidence Act, and therefore statement made before the said officer of the Central Excise and Customs Department would be admissible in evidence. It may be noted that the judgment of this Court in Raja Ram was a Bench of 3-learned Judges whereas the Judgment of this Court in Badaku Joti was a Judgment of 5-learned Judges. The later Judgment of the 5-Judge Bench never disapproved the law laid down by this Court in Raja Ram and on the other hand was of the opinion that in view of the provisions contained in the Bihar and Orissa Excise Act, 1915 more particularly sub-section (3) of Section 78 and the provisions contained in Section 21(2) of the Central Excises and Salt Act which confers power on the Officer of the Central Excise Department, even though the Central Excise Officer may while making the enquiries for the purpose of Act exercises powers of an Officer-in-Charge of a Police Station he does not thereby become a Police Officer even if the broader meaning to those words in Section 25 of the Evidence Act is given. The Court noted further that the Scheme of the Bihar and Orissa Excise Act is distinct and different from the scheme of the Central Excises and Salt Act and as such the decision in Raja Ram will have no application where a statement of the accused is made to an officer under the Central Excises and Salt Act. Mr. B. B. Singh, also brought to our notice a judgment of this Court in the case of *Raj Kumar Karwal v. Union of India*⁵. In support of the contention that even a Superintendent of Excise under Bihar and Orissa Excise Act is not a Police Officer and as such a confessional statement made to him would be admissible in evidence. In the aforesaid case, the question for consideration is whether the officer of Department of Revenue Intelligence (DRI) invested with powers of Officer-in-Charge of Police Station under Section 53 are Police Officers or not within the meaning of Section 25 and this Court answered that those officers are not Police Officers. This decision is in parimateria with the Constitutional Bench decision in 1966 and does not in any way detract the conclusion of this Court in Raja Ram which we have already noticed. In *Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras*⁶ this question had not directly been in issue and the only question that was raised is whether the statement made was under threat and pressure. It is obvious that a statement of confession made under threat and pressure would come within the ambit of

Section 24 of the Evidence Act. This decision therefore would not be direct authority on the point in issue. In the aforesaid premises, the decision of Raja Ram would apply to the alleged confessional statement made by the appellant to the Superintendent of Excise and therefore would be inadmissible in evidence. If that statement is taken out from the purview of consideration then on the residue of material, namely, that the appellant was found coming together with the co-accused and on the statement of co-accused, a conviction under the provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 cannot be sustained. We therefore set aside the conviction and sentence passed against the appellant and he is acquitted of the charge levelled against him. The appeal is allowed. The appellant be set at liberty forthwith if not required in any other case. Fine paid must be refunded.

Appeal allowed.

¹*AIR 1964 SC 828*

²*(1999) 6 SCC 1*

³*AIR 1964 SC 828*

⁴*AIR 1966 SC 1746*

⁵*(1990) 2 SCC 409*

⁶*(1996) 6 SCC 1*