

# CALCUTTA HIGH COURT

Matilall Kalwar

Vs

Emperor

(Suhrawardy, J.)

12.08.1931

## JUDGMENT

### **Suhrawardy, J.**

1. The first point taken on behalf of the petitioner in this rule is that the confession of Matilal Kalwar to Anath Nath Goswami (P. W. 1) who, we understand, is the Excise Sub-Inspector was inadmissible, having regard to the provisions of Section 25, Evidence Act which says that no confession made to a police officer should be admitted in evidence. The point therefore resolves itself into this: whether an Excise Sub-Inspector can be considered to be a police officer within the meaning of Section 25, Evidence Act. There has been a string of cases in this Court: *Rukumali v. Emperor*<sup>1</sup> *Ah Foong Chinaman v. Emperor*<sup>2</sup> *Harbhanjansao v. Emperor* and *Tura Sardar v. Emperor* where it has been held that an Excise Sub-Inspector is not a police officer within the meaning of Section 25, Evidence Act. But the learned advocate who appears for the petitioner draws our attention to a recent case decided in this Court and reported in *Ibrahim Ahmad v. Emperor* where apparently a contrary view was taken. The learned Judges who decided the last mentioned case did not think it necessary to refer the matter to a Full Bench for decision. That being the position of affairs at the present moment, we prefer to follow the older cases decided in this Court and we must hold accordingly that an Excise Sub-Inspector is not a police officer within the meaning of Section 25, Evidence Act. The first point therefore fails and must be negatived.

2. The second point is that having regard to the fact that the complaint as against one accused was withdrawn, the withdrawal of the complaint against one accused amounted to a withdrawal of the complaint against all the accused, having regard to the language of Section 248, Criminal P.C. The matter however has got to be scrutinized and it appears from an examination of the record that the order of withdrawal of the complaint against one of the accused was not made under Section 248, Criminal P. C, but was made at the instance of the Court Inspector under

Section 495, Criminal P.C. That is quite clear from the terms of the order dated 27th October 1930. That being so Section 248, is not attracted to the matter under discussion at all. The order itself shows that it was made under Section 495, and therefore we must hold that the second point also is without any substance and must be negatived. The result therefore is that the rule is discharged.

Cases Referred.

1[1917] 19 Cr. L.J. 524

2[1917] 46 Cal. 411