

Present: Fisher C.J. and Schneider and Garvin JJ.

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277—P. C. Panadure, 10,172

Confession—Statement to Excise Inspector—Meaning of Police officer—Evidence Ordinance, s. 25.

A confession made to an Excise Inspector, who is vested with powers under sections 32, 34, and 36 of the Excise Ordinance, is admissible in evidence.

Per FISHER C.J.—Such statements should not be acted upon unless the Court is satisfied that the statements alleged to be confessions were really and voluntarily made.

CASE referred by Garvin J. to a Bench of three Judges on the question whether an Excise Inspector is a Police Officer within the meaning of section 25 of the Evidence Ordinance, No. 14 of 1895.

Croos Da Brera (with *N. E. Weerasuriya* and *Basnayake*), for accused, appellant.—The conviction in this case is mainly based upon a confession made to an Excise Inspector by an accused who was charged with having had in his possession a quantity of fermented toddy in excess of the prescribed quantity. The question is whether an Excise Inspector can be regarded as a Police Officer for the purpose of section 25 of the Evidence Ordinance.

In *Vidane Arachchi of Kalupe v. Appu Sinno*¹ it was held that a confession made to a Mudaliyar was inadmissible. Prior to the enactment of the Excise Ordinance there was the Arrack Ordinance. And all the duties that are now being performed by the Excise Officers were then being performed by Police Officers under the Arrack Ordinance. Section 32 of Ordinance No. 8 of 1912 deals with the powers of Excise Officers. With the exception of the power of investigation, they have all the powers of the Police Officers. The powers referred to in Chapter XII. of the Criminal Procedure Code are extraordinary ones, and they are not necessary to constitute a person a Police Officer. In the Indian case of *Ahmed v. Emperor*² it was held that an Abkari Officer, corresponding to an Excise Officer in Ceylon, is a Police Officer within the meaning of the section of the Indian Evidence Act corresponding to section 25 of our Evidence Ordinance.

J. E. M. Obeyesekere, C.C., for the Crown, respondent.—The decision of the Bombay High Court in the case of *Ahmed v. Emperor* (*supra*) does not apply to the present case, for Excise Inspectors are

¹ 22 N. L. R. 412.

² (1926) I. L. R. 51 Bom. 78.

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not officers who have the powers of investigation under Chapter XII. of the Criminal Procedure Code. *Vide* Excise Notification No. 1 appearing in *Government Gazette* of December 13, 1912. The Bombay case proceeded almost entirely on this ground. Though the Evidence Ordinance does not contain a definition of the term "Police Officer," reference may be made to section 6 of Ordinance No. 16 of 1865 and section 3 of the Criminal Procedure Code, both of which define who a Police Officer is. It is not sought to restrict the term "Police Officer," as used in section 25 of the Evidence Ordinance, to members of the regular police force in view of what has been the practice of our Courts. But this practice, viz., that of excluding confessions made to Police Headmen and the like proceeded on the footing that they performed police duties. Excise Inspectors cannot be said to perform police duties in any sense of that expression. They are officers invested by statute with certain powers for the protection of the Excise revenue. In this respect they correspond to Sanitary Inspectors, Local Board Inspectors, and the like. The decision in *22 N. L. R. 412* is based upon the fact that a Mudaliyar performs police duties.

Counsel also referred to the following decisions of the Indian Courts to show the trend of judicial opinion in the matter: *Queen v. Ghose*,¹ *Queen Empress v. Bhima*,² *Ah Foong v. Emperor*,³ *Pereira v. Emperor*.⁴

August 1, 1927. FISHER C.J.—

In deciding the question arising on this reference, I should like to make it clear that we are in no degree expressing any opinion in favour of the value and weight of so-called confessions made to persons in authority. Such statements should be jealously scrutinized, and should not be acted upon unless the Court is satisfied that the statements alleged to be confessions were really made and were made voluntarily. Experience shows that such confessions frequently appear in otherwise weak cases, and the fact that if a confession can be obtained the necessity for any further trouble of investigation will usually be obviated must not be lost sight of.

It must be borne in mind that the enactment which section 25 of the Evidence Ordinance, 1895, reproduces was passed because it had been found that such statements could not be relied on as having been made without any pressure, inducement, or undue influence being used.

I should also like to emphasize the importance of not accepting as evidence a mere statement that the accused person "admitted the charge." The exact words of the statement which the witness

¹ (1876) I. L. R. 1 Cal. 207.

² (1892) I. L. R. 17 Bom. 485.

³ (1918) I. L. R. 46 Cal. 411.

⁴ (1926) I. L. R. 28 Bom. 674.

has construed as an admission of guilt should be given in order that the Court may be in a position to decide whether the words used are really and only capable of that construction. It is for the Court to draw the proper deduction or inference from the words used, and not for the witness. There is a clear distinction between admissions of a fact and admissions of guilt of an offence, but the former are often taken or assumed to be the latter.

In this case we are called upon to decide what the Legislature meant when by section 25 of the Evidence Ordinance, 1895, it enacted that "no confession made to a Police Officer shall be proved as against a person accused of any offence."

It is now too late to say that it meant that the statement must be one made to a member of the police force as constituted under the Police Ordinance, 1865. The established practice of the Courts based on the opinion of many learned Judges has been to construe the section as applying to statements made to those who are authorized to exercise powers which constitute them Police Officers in all but in name; such persons for instance, as Police Headmen, who are directly authorized and required to concern themselves with the same range of crimes as that with which the police force themselves are concerned. That seems to me to do no violence to the words themselves and to be, as Sir Alexander Wood Renton, Chief Justice (then Renton J.), said in *Nugokoni v. Perera*,¹ in accordance with both the spirit and the letter of the section.

But the position of an Excise Inspector, with whom we are concerned in the present case, is this: That in respect of a very limited class of offences with which his own department is concerned, he is given some powers which correspond to a fraction of the powers vested in a Police Officer. To take the view that the exercise under statutory authority of any power similar to that vested in a Police Officer constitutes a person exercising such a power a Police Officer for the purposes of section 25 might lead to strange results. (See, for example, section 35 of the Criminal Procedure Code.)

There may be much to be said for the desirability of including statements such as that which forms the subject-matter of this inquiry within the scope of the section, but I do not think that the Legislature by the words used intended to include statements which were made to persons, who, for the purpose of dealing with a special and limited class of offences, are vested with the powers referred to in sections 32, 34, and 36 of the Excise Ordinance, No. 8 of 1912.

Under these circumstances I am of opinion that the statement in question, the evidence as to which has been acted upon by the Magistrate as true and reliable, was admissible.

¹ (1908) 7 *Tamb.* 25.

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The question reserved by my brother Garvin J. for decision by this Bench of three Judges is simple, but not free from difficulty. It is whether an Inspector appointed under the provisions of the Excise Ordinance, No. 8 of 1912, is a Police Officer within the meaning of section 25 of our Evidence Ordinance, No. 14 of 1895. The Evidence Ordinance itself has no definition of the expression "Police Officer." The Police Ordinance, No. 16 of 1865, defines it as meaning "a member of the regular police force," and including "all persons enlisted under this Ordinance." The "regular police force" must be taken as meaning the force established under the provisions of the Ordinance. Our Criminal Procedure Code (section 3 (1) as amended by section 2 of the Ordinance No. 6 of 1924) defines the expression as meaning a "member of an established police force" and as including "the Inspector-General, the Deputy Inspector-General, Superintendents, Inspectors, Sergeants, and Constables of Police." It also defines "Peace Officer" as including "Police Officers" and "Headmen appointed by a Government Agent in writing to perform police duties." These definitions are in express terms limited to the Ordinances in which they appear. There are three local cases in which the question was considered whether certain persons who were not members of the regular police force came within the designation of "Police Officer" for the purpose of section 25 of the Evidence Ordinance.

In *Nuyokaniy v. Perera*¹ decided in 1908, Wood Renton, J. held that a statement amounting to a confession made by an accused person to a Mudaliyar who was holding an inquiry on the order of the Government Agent upon a petition presented by the complainant against a Police Vidane was not admissible in evidence. He said: "It is of great moment that both the spirit and the letter of that section (section 25) should be maintained. I think it applies to Headmen of all grades as well as to 'Police Officers' within the strict meaning of the term." I am inclined to think that he used the words "Headmen of all grades" in answer as it were to an argument which must have been addressed to him that Police Vidanes might, but a Mudaliyar did not, come within the expression "Police Officer." I followed this decision, without discussing the question, in *Vidane Arachchi of Kalupe v. Appu Sinno* in 1921, and held that a confession made to a Mudaliyar who had arrested an accused person was inadmissible. The decision of these two cases, it will appear, was largely influenced by the definition of "Peace Officer" in the Criminal Procedure Code, as including Headmen appointed by the Government Agent in writing to perform police duties. The Mudaliyar, in certain parts of the Island, is the chief of such Headmen.

¹ (1908) 7 *Tamb.* 28.

² (1921) 22 *N. L. R.* 412.

In 1913 the precise question now presented for our decision was raised in *Siva Subramanian v. Kandan*,¹ and Ennis J. held in a short judgment that a confession made to an Excise Inspector was admissible in evidence. In the course of his judgment he said: "In India a very wide interpretation has been given to the term 'Police Officer' in the equivalent section of the Indian Evidence Act, but no case has been cited in which it has been held to apply to an Excise Officer making a search, or to a Customs Officer, or other officer having similar powers." It is not possible to ascertain what authorities were cited to him, as the whole of the report consists of a bare reproduction of the judgment only.

Before us the following decisions of the India High Courts were discussed and cited as supporting the contention of the one party or the other to this appeal:—(1) *Queen v. H. C. Ghose* ², (2) *Queen Empress v. Bhima*,³ (3) *Queen Empress v. S. Sheik*,⁴ (4) *Ah Foong v. Emperor*,⁵ (5) *Pereira v. Emperor*,⁶ (6) *Queen Empress v. Babu Lal*,⁷ (7) *N. S. Ahmed and another v. Emperor*.⁸

According to these cases the view consistently entertained in India for over fifty years has been that the expression "Police Officer" in section 25 of the Indian Evidence Act should be construed, not "in any strict technical sense, but according to its more comprehensive and popular meaning or significance." The words "popular significance" first occurred in the *Queen v. Ghose* (*supra*), which was decided in 1876. In that case the argument was submitted that a "Deputy Commissioner of Police" who, in his capacity as a Magistrate, had recorded the confession of an accused person was not a "Police Officer" within the meaning of section 25, and that the expression should be confined to that class of persons who are called in the Bengal Police Act (Act IV. of 1866) "members of the police force." The words "popular significance" were used in reference to that argument, the Judge saying that a Deputy Commissioner of Police, be he also a Magistrate, is still a Police Officer in the popular significance of that term.

I would refer in particular to two of the above-named cases:—(1) *Ah Foong v. Emperor*, (2) *Ahmed and another v. Emperor*.

In the former of these cases the question was raised whether a confession made to certain Excise Officers who had seized the accused persons while transporting opium, contrary to law, was admissible in evidence, inasmuch as the officers "although not called Police Officers were in reality Police Officers." But the argument was dismissed without any other observation than that in the opinion of the Judge (Sanderson C.J.): "It was not possible to think that the Excise Officers could be said to be Police Officers."

¹ 1 Cr. A. R. 79.

² (1876) I. L. R. 1 Cal. 207.

³ (1892) I. L. R. 17 Bom. 485.

⁴ (1899) I. L. R. 26 Cal. 569.

⁵ (1918) I. L. R. 46 Cal. 411.

⁶ (1926) I. L. R. 28 Bom. 674.

⁷ (1884) I. L. R. 6 All. 509.

⁸ (1926) I. L. R. 51 Bom. 78.

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In the other case—*Ahmed and another v. Emperor*—all the other cases named above are discussed. It is a case decided by the Full Bench of the Bombay High Court. It was held there that “ an Abkari Officer (corresponding to an Excise Officer in Ceylon) who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence is a Police Officer within the meaning of section 25 of the Indian Evidence Act. ” The principal judgment was delivered by Sir Amberson Marten C.J. He differentiated the case *Ah Foong v. Emperor (supra)*, and stated that the Excise Officers in that case were given only limited powers of arrest and were, therefore, not in the same position as Abkari Officers under the Bombay Abkari Act upon whom “ the Legislature had conferred substantially all the powers of a Police Officer, and have thereby in effect made them Police Officers. ”

With all respect to the learned Judges who decided the above cases, I venture to say that while accepting those cases as guides only in so far as they decide that the expression “ Police Officer ” in the Evidence Act should be construed, not in any technical sense, but should be given a more comprehensive significance, I am unable to agree that it should be construed according to its “ popular significance, ” whatever that may mean. “ Popular significance ” is too vague. Our Evidence Ordinance and Excise Ordinance were both modelled closely upon the Indian Acts. Accordingly, the decisions of the Indian Courts, although not binding on us, are of great assistance to us in interpreting these Ordinances. The case of *Ahmed and another v. Emperor (supra)* cannot be relied upon as an authority for supporting the proposition that an Excise Inspector under our Ordinance is a “ Police Officer ” within the meaning of section 25 of our Evidence Ordinance. The Indian case turns entirely upon the fact that the Excise Officers in that case had the power of investigation under section 41 of the Bombay Abkari Act (No. V. of 1878), which corresponds to section 33 of our Ordinance. The Excise Inspectors under our Ordinance are not given the powers in section 33. They and other officers of Excise derive their appointment and powers by virtue of a notification by the Governor under the provisions of section 7 of our Ordinance. The only notification in this connection which was brought to our notice is Excise Notification No. 1 appearing in the *Government Gazette* of December 13, 1912. The only powers conferred upon Excise Inspectors by that notification are those in sections 32, 34, and 36 of the Ordinance. The powers in those sections are limited to entering and inspecting certain places of manufacture and bottling of excisable articles, to arresting offenders against Excise laws, and to searching places upon suspicion

that offences are being committed in such places. Our Excise Inspectors, therefore, have not the wide police powers possessed by the Excise Officers in the Indian case.

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The Indian case, therefore, does not support the contention that our Excise Inspectors are Police Officers, nor am I convinced by any arguments addressed to us that they are to be regarded as Police Officers within the meaning of section 25 of our Evidence Ordinance. The question whether an Excise Officer clothed with the powers mentioned in section 33 of the Excise Ordinance comes within the expression Police Officer in section 25 of the Evidence Ordinance does not arise on this appeal, and I express no opinion thereon in holding that an Excise Inspector does not. I so hold on the ground that the mere possession by a person of only certain limited powers, such as the right to arrest an offender or search a place in connection with an offence, is not sufficient to invest him with the character of a Police Officer any more than those persons who, under the Criminal Procedure Code, the Customs Ordinance and the Railway Ordinance, or any other law, are given limited powers of arrest or search of person or place for the purposes of those enactments. As at present advised I would construe "Police Officer" in section 25 of the Evidence Ordinance as meaning an officer of police as defined by the Police Ordinance, and as including a Peace Officer within the latter part of the definition of Peace Officer in the Criminal Procedure Code. In giving this construction I am not unmindful of the fact that the section was intended as a wholesome protection to the accused, and that, as Sir Richard Garth C.J. said in *Queen v. Chunder Ghose (supra)*, its humane object is to prevent confessions obtained from accused persons through any undue influence being received as evidence against them.

GARVIN J.—

The purpose of this reference was to obtain an authoritative decision on the question whether an Excise Officer could be regarded as a Police Officer within the meaning of section 25 of the Evidence Ordinance, 1895. A confession to an Excise Officer is not an uncommon feature of the records of proceedings taken in prosecutions under the Excise Ordinance. Whatever may be thought of the policy of giving such confessions in evidence, it has become a matter of practical importance to determine whether in law such confessions are admissible, or whether they should be excluded under the provisions of section 25 of the Evidence Act for the reason that Excise Officers are "Police Officers," within the meaning to be assigned to that term, as it is used in that section.

For my own part, I do not think the term "Police Officer" as used in section 25 can be given a more extensive meaning than has

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already been given to it in the judgments of this Court. The term "Police Officer" ordinarily means a member of an established police force; as used in section 25 of the Evidence Act it may legitimately be applied to officers of Government who are authorised generally to act as Police Officers and are charged with the performance of the duties and armed with the powers of a Police Officer—in short, who are, as my Lord has said in his judgment, Police Officers in everything but name.

I desire also to express my entire agreement with the observations made by my Lord on confessions and the need for satisfying oneself as to the reality of an alleged confession before it is acted upon.
