Percy Rustam Basta vs State Of Maharashtra on 16 March, 1971

Equivalent citations: 1971 AIR 1087, 1971 SCR 35, AIR 1971 SUPREME COURT 1087, 1973 MADLJ(CRI) 497, 1973 2 SCJ 338, 1971 SCD 424, 1971 CRI APP R (SC) 305, 1975 BOM LR 715

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, A.N. Ray

PETITIONER:
PERCY RUSTAM BASTA

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT16/03/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1971 AIR 1087 1971 SCR 35
1971 SCC (1) 847
CITATOR INFO :
RF 1992 SC1831 (32)

ACT:
Customs Act, 1962--S. 108--inquiry under--Statement made to customs officers--Admissibility in evidence--Evidence Act s. 24--Person against whom inquiry being held not "accused person" within the meaning of s. 24--To be told to speak truth on pain of prosecution does not constitute threat.

HEADNOTE:
The appellant was convicted for offences under the Customs Act, 1962. He challenged the legality of his conviction on the ground that his statement to the customs authorities made on a summons issued under s, 108 of the Act and on which the conviction was substantially based was not admissible in evidence in view of s. 24 of the Evidence Act. It was contended that the statement was procured by threat

in as much as the officer who recorded the statement warned the appellant that he was bound to state the truth as the officer was conducting a judicial proceeding to which ss. 193 and 228 of the Penal Code applied. Dismissing the appeal,

HELD,: (i) A statement by a person against whom an inquiry is being held under section 108 is not a statement made by a person accused of an ,offence. Therefore, the essential ingredient to attract s. 24, namely that the confession must be made by an accused person, is lacking in this case.[143 D]

Romesh Chandra Mehta v. State of West Bengal, [1969] 2 S.C.R. 461 and Illias v. Collector of Customs, Madras [1969] 2 S.C.R. 613, relied on.

(ii) A compulsion to speak the truth emanates in this case riot from ,the officers who recorded the statement but from the provisions of the statute itself. What is necessary to constitute a threat under s. 24 of the Evidence Act is that it must emanate I e from' the person in authority. The officers recording the statement were only doing their duty in bringing to the notice of the appellant the provisions of the statute. [44 C-E]

(iii) To be told that the law required him to tell the truth and if he did not tell the truth he was liable to be prosecuted under s. 193 Penal ,Code, for giving false evidence did not constitute a threat under s. 24 of the Evidence Act.

(iv) Even assuming that there was an inducement or threat, the appellant bad no basis for supposing that by making the statement he would gain any advantage or avoid any evil with reference to the proceedings in respect of which an inquiry was being conducted by the customs officers. Therefore, even on this ground s. 24 of the Evidence Act has no application. [44 G-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 267 of 1968.

Appeal from the judgment and order dated September 26, 1968 of the Bombay High Court in Criminal Appeal No. 244 of 1967.

A.S.R. Chari, R. Nagaratnam, Janendra Lal and B. R. Agarwal, for the appellant.

H. R. Khanna and B. D. Sharma, for the respondent. The Judgment of the Court was delivered by Vaidialingam, J.This appeal by the first accused, on certi- ficate, is directed against the judgment of the Bombay High Court dated September 26, 1968, in Criminal Appeal No. 244 of 1967 confirming his conviction and sentence passed against him by the Presidency Magistrate, Mazgaon, Bombay for offences under S. 120B I.P.C. read with S. 135 of the Customs Act, 1962-(Act 52 of 1962) (hereinafter

to be referred as the Act) and also under S. 135 of the Customs Act in respect of the articles claimed to have been recovered from his possession.

The short point that arises for consideration in this appeal is whether S. 24 of the Evidence Act is a bar to the admissibility in evidence of the statement Ex. T given by the appellant to the Customs Officers on a summons issued to him under S. 108 of the Act.

The appellant along with six others was charged under the sections mentioned above and after being found guilty was sentenced to undergo one year's rigorous imprisonment and to pay a fine of Rs. 2,000/- for the charges under S. 120B I.P.C. read with S. 135 of the Act. He was also sentenced to undergo one year's rigorous imprisonment and to pay a fine of Rs. 2,000/- for the charge under S. 135 of the Act. The sentences were directed to run concurrently. In default of payment of fine, he was also sentenced to undergo further rigorous imprisonment for the period mentioned in the judgment of the Presidency Magistrate.

The case against the appellant was that he and several other persons entered into a conspiracy during the period from June, 1963 to the end of December, 1963 to smuggle wrist watches and other luxury goods such as Nylon Textiles, toilet requisites, plying cards, cigarette lighters, saffron etc. from Dubai to India through Mechanized sailing vessel and land the said imported and smuggled goods surreptitiously at any coast near Bombay and then to bring the smuggled goods to Bombay by Motor vehicles. It was further alleged that in pursuance to the said conspiracy such articles were actually smuggled in the month of December, 1963. The various parts played by the appellant along with the other accused had been given in the evidence of the prosecution witnesses. P. W. 19, Inspector in the Rummaging Division Town Intelligence in the Bombay Customs, on receipt of information in or about December 21, 1963 about the smuggling of the goods conducted searches in various places and seized several smuggled articles.

During the pendency of the trial, the third and the fifth accused died and the second accused who was present for some time later absconded necessitating separation of his trial. Some other accused could not be traced at all. Therefore, the trial proceeded against the appellant and accused Nos. 4, 6, and 7. It is not necessary to refer to the pleas of accused Nos. 4, 6 and 7 as they have been acquitted of all the charges by the Presidency Magistrate. The appellant had filed a lengthy written statement on October 24, 1966 denying the. charges levelled against him. He had stated that he was not in any manner concerned with any conspiracy. He also denied, that any articles had been recovered by the Customs Officers from the houses mentioned by them and stated that in any event he had nothing to do with any of those articles. He pleaded that his brother Cama was inimical towards him and that the latter in connivance with the Customs authorities had foisted this criminal case against him making false allegations. The appellant alleged that he had left Bombay for Ajmer to pay his respects to the Darga on December 21, 1963 and returned to Bombay on January 2, 1964, when he was apprehended by the Customs authorities and kept in detention, in the first instance, till January 7, 1964. During this period of detention he was conti- nuously harassed and interrogated by P. Ws. 5 and 19 and forced to put his signature on January 7, 1964 to a statement already got written and prepared by P. W. 5. He was threatened that if he did not put his signature on the said statement, his mother and another brother will be prosecuted. He further alleged that it was represented to him

that the statement to which he was being asked to put his signature was intended only to be used against the second accused and no part of it was meant to be used against him. It may be stated at this stage that the statement recorded from the appellant by P. Ws. 5 and 19, on January 7, 1964 is Ex. T. The statement referes to various matters concerning his relationship with the other accused as well as his connection with several articles which had been seized and which were the subject of the charges. We do not think it necessary to refer to Ex. T in any great detail nor to the various seizures of articles made by the Customs authorities. It is enough to state that the conviction of the appellant has been substantially, based on the confessional statement Ex. T after finding independent corroboration furnished by other evidence on record in respect of the statements contained in Ex. T. Objections were taken to the admissibility in evidence of Ex.T. on the ground that it is hit by Art. 20(3) and ss. 24 and 25 of the Evidence Act. All these objections were overruled both by the Presidency Magistrate as well as the High Court. The findings of the Presidency Magistrate and accepted by the High Court are that Ex. T is a voluntary statement and it was a true disclosure made by the appellant. The allegation of the appellant that he was forced to Put his signature to Ex. T which had already been prepared by P. Ws. 5 and 19 and that he was induced to put his signature on the representation that it will be used only against. the second accused and not against the appellant, was rejected. The further findings are that Ex. T was a voluntary statement made by the appellant and that his plea that he was kept under illegal, detention from January 2, 1964 to January 7, 1964 was false. It has also been found that Ex. T is not hit either by Art. 20(3) or by ss. 24 and 25 of the Evidence Act.

The only contention that has been raised before us by Mr.A.S. R. Chari, learned counsel for the appellant, is, that in view of S. 24 of the Evidence Act, Ex. T, the statement of the appellant recorded by the Customs authorities under the Act, is not admissible in evidence at the trial for the offences in respect of which the appellant was charged and tried. His further contention is that as the conviction has been based substantially on the state- ments contained in Ex. T, the conviction is illegal. The other contentions based on Art. 20(3) and S. 25 of the Evidence Act which were taken in the High Court have not been taken before us. In fact those contentions are no longer available to the appellant in view of the decisions of this Court. According to Mr. Chari when the statement Ex. T was recorded by the Customs officials, the appellant was in the position of an accused. It is in evidence that P. W. 5, who recorded the statement warned the appellant that he was bound to state the truth as the officer was conducting a judicial proceeding to which the provisions of ss. 193 and 228 1. P. C. apply. This, according to the learned counsel, amounts to a threat and as the statement Ex. T has been procured on the basis of such a threat, it is inadmissible in evidence.

On the other hand, Mr. H. R. Khanna, learned counsel for the State has referred us to the findings recorded by the Presidency Magistrate and accepted by the High Court regarding voluntary nature of Ex. T. The counsel also pointed out that the fact that P. W. 5, who recorded the statement Ex. T from the appellant, informed him that he was bound to speak the truth as it was a# judicial proceeding to which S. 1931. P. C. applies, does not amount to any threat in law so as to attract S. 24 of the Evidence Act.

We will now reter to the circumstances under which Ex. T was recorded as found by both the Courts. Consequent on in- formation received by the Customs authorities, several raids were conducted

from December 21, 1963. The appellant went to the Customs House at about 8 A.M. on January 7, 1964. By about 8.30 A.M. summons under s. 108 of the Act was served on him. From 11.30 A.M. onwards to about 8.30 P.M. the process of recording of the statement Ex. T. from the appellant continued excepting for a short break of about 21 hours for lunch, tea and other requirements. The appellant was arrested immediately after his statement Ex. T was completed. The seizures of the entire contraband goods were completed by about December 25, 1963. Though the attention of the appellant was drawn to sub-s. 4 of S. 108 of the Act, he was not informed or warned that his statement was likely to be used in the event of any prosecution against him for the said offence. Undoubtedly Ex. T contained various incriminating facts regarding the complicity of the appellant with the offences alleged against him. The Inspector of Customs, P. W. 5, who recorded the statement Ex. T and P. W. 19, have both admitted that they questioned the appellant till the statement Ex. T was finally completed at 8.30 P.M. on January 7, 1964. Both of them have also asserted that they had not given any threat or ,offered any inducement to the appellant before the statement Ex. T was made. P. W. 5 has deposed that he drew the attention of the appellant to the last paragraph of the summons issued under S. 108 of the Act. In fact in Ex. T the appellant states that he had received summons No. 3 of 1964 dated January 7, 1964 issued to him under S. 108 of the Act. He has further stated that he had read the summons and that he had further understood that giving false evidence is an offence punishable under S. 193 of the Indian Penal Code. P. W. 5 has further deposed that he had explained to the appellant the provisions of s. 1931. P. C. and that the statement was being recorded as if he was in court and that the appellant was bound to speak the truth and that if he made a false statement he would be prosecuted. Based upon these answers of P. W. 5, Mr. Chari, urged that it is clear that P. W. 5 has administered a threat to the appellant and it was in consequence of such a threat that the appellant gave the statement Ex. T and thereby has placed himself in a grave jeopardy of action being taken against him under the Act.

Before we refer to S. 24 of the Evidence Act, it is desirable to advert to the relevant provisions of the Customs Act. Sections 107 and 108 are as follows :

> "S. 107 Power to examine persons- Any officer of customs empowered in this behalf by general or special order of the Collector of Customs may, during the course of any enquiry in connection with the smuggling of any goods,-
>
> (a) require any person to produce or deliver any document or thing relevant to the enquiry;
>
> "(b) examine any person acquainted with the facts and circumstances of the case.

S. 108. Power to summon persons to give evidence and produce documents-

> (1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

> (2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. (3) All persons so summoned shall be bound to attend either in person or by an authorized agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and pro-

duce such documents and other things as may be required Provided that the exemption under section 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such enquiry a,, aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code."

Section 122 of the Act deals with confiscation of goods and levy of penalty. Section 124 deals with the procedure to be adopted before ordering the confiscation of any goods or imposing any penalty on any person. Section 135 deals with prosecution before a criminal court in the circumstances mentioned in cls, (a) and (b) and that prosecution is without prejudice to any action taken under the Act. This Court had to consider in Romesh Chandra Mehta v. State of West Bengal(1) whether an officer of customs under the Sea Customs Act, 1878 was a police officer and whether the statements made to him were hit by Art. 20(3) of the Constitution and inadmissible in evidence under S. 25 of the Evidence Act. A further question also arose whether an officer of customs acting, (1) [1969] 2 S. C. R. 461.

under the Act is in any event a police officer within the meaning ,of S. 25 of the Evidence Act and hence the confessional statements made to him were inadmissible in evidence. After a consideration of the scheme of the Sea Customs Act, 1878, this Court held that a Customs Officer does not exercise, when inquiring into, a .suspected infringement of the Sea Customs Act, powers of investigation which a police officer may in investigating the commission of an offence and that he is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating about forfeiture and penalty. Further it was held that the said officer has no power to investigate an offence triable by a Magistrate and that he can only make a complaint in writing before a competent Magistrate and hence S. 25 of the Evidence .Act has no application. It was further held that the steps taken by the Customs Officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of ,goods dutiable or prohibited and imposing penalties and that the Customs Officer does not at that stage accuse the person suspected of infringing the provisions of the Sea Customs Act with the corn.mission of any offence. Finally, it was held that a person examined under S. 17 1 A of the Sea Customs Act does not stand in the character of an accused person inasmuch as there is no formal accusation made against him by any person at that time and hence any statement made by such a person to a, Customs Officer is not hit by Art. 20(3) of the Constitution.

The scheme of the Act was also considered in the said deci- sion and some points of difference between the Act and the Sea Customs Act, 1878 were noted. But notwithstanding the slight difference in the powers exercised by a, Customs Officer under the Act, it was held that the Customs Officer under the Act is not a police officer within the meaning of S. 25 of the Evidence Act. It was emphasized that the proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smugly and that the Customs Officer is for all purposes an officer of the Revenue. It was laid down that as the Customs Officer under the Act is not a police officer, the statement made before him by a person, who is arrested or against whom an enquiry is made, are not covered by S. 25 of the Evidence Act. It was further laid down that until a complaint is filed before a Magistrate, the person against whom an enquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under S. 135. The discussion on this aspect is wound up by this Court as follows :

> "..... The Customs Officer even under the Act of 1962 continues to remain a revenue officer primarily concerned with the detection of smuggling and enforcement and levy of proper duties and prevention of entry of proper duties and prevention of entry into India of dutiable goods without payment of duty and of goods of which the entry is prohibited. He does not on that account become either a police officer, nor does the information conveyed by him, when the person guilty of an infraction of the law is arrested, amount to making of an accusation of an offence against the person so guilty of infraction. Even under the Act of 1962 a formal accusation can only be deemed to be made when a complaint is made before a Magistrate competent to try the person guilty of the infraction under ss. 132, 133, 134 and 135 of the Act. Any statement made under ss. 107 and 108 of the Customs Act by a person against whom an enquiry is made by a Customs Officer is not a statement made by a person accused of an offence."

From this decision it follows that a Customs Officer conduc- ting an enquiry under ss. 107 or 108 of the Act is not a police officer and the person against whom the inquiry is made is not an accused and the statement made by such a person in that inquiry "is not a statement made by a person accused of an offence".

The same position has been reiterated in the latter case of Illias v. Collector of Customs, Madras.(1) Now coming to S. 24 of the Evidence Act, it runs as follows "Section 24 : Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding :

> A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to, the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

To attract the provisions of this section, the following facts have to be established :

(a) that the confession has been made by an accused, person to a person in authority;

(b) that it must appear to the Court that the confession. has been obtained by reason of any inducement.. threat or promise proceeding from a person in authority;

(1) (1969] 2 S. C. R. 613.

(c) that the inducement, threat or promise must have reference to the charge against the accused person; and

(d) the inducement, threat or promise, must, in the opinion of the Court, be such that the accused in making the confession believed or supposed that by making it he would pin any advantage or avoid any evil of temporal nature in reference to the proceedings against him.

We have already pointed out that when the appellant ap- peared, before the Customs Officers on the morning of January 7, 1964, he was served with a summons under S. 108 of the Act and that it was after the receipt of the summons, the appellant gave the statement Ex. T. From the decision in Ramesh Chandra Mehta v. State of West Bengal(1), it is clear that when an inquiry is being conducted under S. 108 of the Act, and a statement is given by a person against whom the inquiry is being held it "is not a statement made by a) person accused of an offence and the person who gives the statement does not stand in the character of an accused person." Therefore the first essential fact to be established, to attract S. 24, referred to above, is lacking in this case, as the appellant was not an "accused person". We have already stated that it has been found by both the Courts that the statement Ex. T is a voluntary statement made by the appellant. Mr. Chari attempted to bring the statement Ex. T under S. 24 of the Evidence Act because of P. W. 5 having informed the appellant that the statement was being recorded as if he was a court and that the appellant was bound to speak the truth and that if any false statement is made, he would be prosecuted. P. W. 5 has also stated that he explained S. 193 1. P. C. to the appellant. According to the learned counsel this conduct of P. W. 5 clearly amounts to a threat being administered to the appellant.

It is not in dispute that P. W. 5, who recorded the confes- sion, is a person in authority within the meaning of S. 24 of the Evidence Act. But the question is whether, when P. W. 5 drew the attention of the appellant to the fact that the inquiry is a judicial proceeding to which S. 1931. P. C. applies and that the appellant must speak the truth, it can be considered to be a threat..... proceeding from a person in authority" under the section.

We are not inclined to accept the contention of Mr. Chari that in the circumstances mentioned above any threat has proceeded from a person in authority to the appellant, in consequence (1) [1969] 2 S. C. R. 461.

of which the statement Ex. T was given. Section 108 of the Act gives power to a Customs Officer of a gazetted rank to summon any person to give evidence in any inquiry in connection with the smuggling of any goods. The inquiry made under this section is by virtue of sub-section (4) deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code. A person summoned under S. 108 of the Act is bound to appear and state the truth when giving evidence. If he does not answer he would render himself liable to be prosecuted under S. 228 1. P. C. If, on the other hand, he answers and gives false evidence, he would be liable to be prosecuted under S. 193 I. P. C. for giving false evidence in a judicial proceeding. In short a person summoned under S. 108 of the Act is told by the statute itself that under threat of criminal prosecution he is bound to speak what he knows and state it truthfully. But it must be noted that a compulsion to speak the truth, even though it may amount to a threat, emanates in this case not from the officer who recorded the statement, but from the provisions of the statute itself. What is necessary to constitute a threat under S. 24 of the Evidence Act is that it must emanate from the person in authority. In the case before us there was no such threat emanating from P. W. 5, who recorded the statement of P. W. 19, who was guiding the proceedings. On the contrary the officers recording, the statement were only doing their duty in bringing to the notice of the appellant the provisions of the statute. Even if P. W. 5 had not drawn the attention of the appellant to the fact that the inquiry conducted by him is deemed to be a judicial proceeding, to which S. 193 I. P. C. applies, the appellant was bound to speak the truth when summoned under S. 108 of the Act with the added risk of being prosecuted, if he gave false evidence.

Further, it is to be seen that it is not every threat, inducement or promise even emanating from the person in authority that is hit by S. 24 of the Evidence Act. In order to attract the bar, it has to be such an inducement, threat or promise, which should lead the accused to suppose that "by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him". In the case before us what is it that the appellant has been told ? He has been told that the law requires him to tell the truth and if be does not tell the truth, lie may be prosecuted under S. 193 I. P. C. for giving false evidence. This. we have held, does not constitute a threat under S. 24 of the Evidence Act. The plea of the appellant was that he was compelled to make the statement under the threat that otherwise his mother and another brother will be prosecuted. He has further stated that he was induced to make the statement on the belief that it will be used only against the second accused and not against him. These pleas of the appellant have been disbelieved by both the trial court and the High Court. , Therefore, it follows that even assuming that there was an inducement or threat, the appellant had no basis for supposing that by making the statement he would gain any advantage or avoid any evil with reference to the proceedings in respect of which an inquiry was being conducted by the Customs Officers. Therefore, even on this ground also section 24 of the, Evidence Act has no application.

For all the above resons we hold that by the mere fact that the Customs Officer P. W. 5, who recorded the statement Ex. T, explained the provisions of S. 193 1. P. C. and informed the appellant that he was bound to tell the truth and that he is liable to be prosecuted if he made a false statement, there was no threat given to the appellant. We accordingly hold that S. 24 of the Evidence Act has no application and the statement Ex. T was properly admitted in evidence in the trial of the appellant. Both the Courts have found that there is also independent evidence to corroborate the truth of the

statements in Ex. T. The question of admissibility of Ex. T in evidence, having been decided against the appellant, no other point has been argued before us. In the result the appeal fails and is dismissed.

K.B.N. Appeal dismissed.