
(1975) 01 AP CK 0012
In the Andhra Pradesh High Court

Bhagwan Das Behi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-01-1975

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 24, 25

Citation : (1975) CriLJ 946

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Judgement

Chennakesav Reddy, J.—In this petition presented u/s 482, Criminal Procedure Code the only question that arises is whether the petitioner is a person accused of an offence entitled to the protection of Article 20(3) of the Constitution of India and the statement made by him to P.W. 1 on 4-9-1970 is inadmissible in evidence against him.

2. The facts giving rise to the petition may be broadly stated. The petitioner is the first accused in the case. He is the partner of the firm M/s. R. L, Bhagwan Das. Amritsar who deals in manufacture of gold ornaments and jewellery of 22 carats. Their firm gets ornaments and jewellery made out in their shop. The firm has licence No." 91/ Gold dealer/ASR/63 issued by the Assistant Collector, Central Excise, Amritsar to sell gold ornaments throughout India. Accused Nos. 2 and 3 are the servants and authorised persons of the firm. Accused No. 2 attends to the sale of gold ornaments of the firm while accused No. 3 assists accused No. 2. Under the direction of Accused No. 1 Accused Nos. 2 and 3 were selling gold ornaments as representatives of the firm in the various Districts of Andhra Pradesh.

3. On 28-8-1970 at about 21-45 Hrs. Accused Nos. 2 and 3 were detained at Waltair Railway Station Platform when they were about to board Howrah-Madras Janata Express., on suspicion that they were in possession of contraband gold

jewellery by the Railway Police Constable M. A. Mohan. The said Railway Police Constable sent message to P.W. 1 the Customs Officer who immediately proceeded to the Waltair Railway Station and in the presence of mediators searched accused 2 and 3 and found 153 pieces of Gold ornaments, cash and number of documents and account books and seized "the same under a mediator"s report attested by the mediators. Accused 2 and 3 could not account for the said pieces of " the gold ornaments and the articles found in their possession did not tally with the ornaments noted in other records or accounts in- the possession of accused 2 and 3.

4. On 3-9-1970, the Customs Officer recorded the statements of accused 2 and 3. In these statements, both the accused admitted that they were the sales representatives of M/s. R. L. Bhagwan Das, Amritsar (Accused 1) who are dealers in gold ornaments and jewellery and that they had started, on 27-7-1970 from Amritsar with 135 pieces weighing, 1406.725 gms. of gold ornaments of 22 carat purity. They further stated that the gold jewellery seized by the Customs officials and the gold jewellery brought by them for sale were not the same, that they did not know how the gold jewellery seized from them came into their possession and that they could not also explain what happened to the gold jewellery brought by them for sale. On 4-9-1970, P.W. 1 recorded a statement from accused 1. Subsequently all the three accused were prosecuted for offences under Sections 85, 87 and 88 of the Gold (Control) Act, 1968.

5. During the course of the examination of the Customs Officer, as P.W. 1 when the statement said to have been recorded by P.W. 1 from Accused No. 1 on 4-9-1970 was sought to be marked as evidence against the accused, the learned Counsel for the accused took an objection for its admission on the ground that it was hit under Sections 24 and 25 of the Evidence Act and Article 20(3) of the Constitution of India. The learned Magistrate overruled the objection and directed that the document be admitted. It is this order of the learned Magistrate that is sought to be quashed in this petition.

6. The principal and only contention of the learned counsel for the petitioner, Sri M, Bhujanga Rao was that the first accused was a "person accused of an offence" within the meaning of Article 20(3) of the Constitution by the time his statement was recorded by P.W. 1 on 4-9-1970 and that the said statement was therefore inadmissible in evidence. In support of his submission the learned counsel placed strong reliance on the decisions reported in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, and Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, . In the first of the two cases, JagannatVm-das, J., speaking for the Supreme Court observed thus:

Broadly stated the guarantee in Article 20(3) is against "Testimoniftl compulsion". It is- suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal, import. So to limit it would be to rob the guarantee or its

substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase .used in Article 20(3) is "to be a witness and not to appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution." The Supreme Court in the second case reiterated the principles enunciated in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, .

7. Therefore applying the aforesaid principles, the question that presented itself in this case is whether there was formal accusation relating to the commission of an offence against accused 1 in this case "by the time his statement was recorded on 4-9-1970 which could give protection to the accused petitioner under Article 20(3) of the Constitution. Admittedly, the statements of accused Nos. 2 and 3 had been recorded on 3-9-1970 by P, W. 1. In those two statements, they had admitted that they were the sales representatives of the first accused firm, that the accused firm were the manufacturers of gold ornaments and jewellery of 22 carat, that they had started from Amritsar with 135 pieces of gold ornaments of 22 carat purity, that they could not explain what happened to the gold jewellery brought by them for sale and that the jewellery seized from them and brought by them for sale were not the same. From these statements, it is evident that accused 1 is a dealer in gold, that he had employed accused Nos. 2 and 3 for the sale of gold jewellery manufactured by the first accused firm. Accused Nos. 2 and 3 have further admitted contravention of the provisions of the Gold (Control) Act. Therefore in the circumstances it must be held that there was formal accusation against the first accused, the manufacturer of an offence punishable u/s 88 of the Gold (Control) Act. Therefore, accused No. 1 was a "person" accused of an offence within the meaning of Article 20(3) of the Constitution and the statement recorded by P.W. 1 on 4-9-1970 cannot be used as evidence against the accused 1.

8. The objection taken for the admissibility of the said statement is upheld and the order of the learned Magistrate dated 28-9-1974 overruling the objection is set aside. The petition is allowed.