

**Criminal Revision**  
**Present :-The Hon'ble Justice Ashim Kumar Roy**  
**Judgment On : 21-05-2010**  
**C.R.R. No. 33 of 2010**  
**Ashoke Dhara**  
**versus**  
**State of West Bengal**

**POINTS :-**

Discretionary Power – Power under Section 319 of the Code of Criminal Procedure – It is a Discretionary power of the Court – Should be invoked in the facts and circumstances of the present case – An Excise Officer is empowered to investigate into an offence punishable under the said Act exercising any power conferred upon a police officer – Code of Criminal Procedure, 1973, S-319 and Bengal Excise Act, 1909 S-73 &74 .

**FACTS :-**

The prosecution moved an application before the trial court with a prayer for proceeding against the petitioner on the basis of evidence of PW1 and PW5. The trial court rejected such prayer and a criminal revision was moved before the court of sessions. The court of sessions reversed the order of the trial court and directed the petitioner to be proceeded against in the said trial along with the accused already arraigned. The petitioner challenging the said order has moved the instant criminal revision .

**HELD:-**

According to the provisions of Section 319 of the Code of Criminal Procedure, in course of any enquiry into, or trial of, an offence, if it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

Para 3

The term evidence employed in Section 319 of the Code necessarily means such evidence which constitute legally admissible evidence.

Para 4

According to the Section 74 of the Bengal Excise Act, an Excise Officer is empowered to investigate into an offence punishable under the said Act exercising any power conferred upon a police officer under Sections 160 to 171 of the Code and for the purpose of Section 156 of the Code of Criminal Procedure, an Excise Officer empowered under sub-section (2) of Section 73 of the Bengal Excise Act be deemed to be the Officer-in-Charge of a police station and the report which shall be submitted after conclusion of investigation be deemed to be a police report under Section 190 of the Code of Criminal Procedure. Therefore, an Excise Officer is empowered to exercise all the powers vested on an Officer-in-Charge of a police station under Chapter XV of the Code of Criminal Procedure, including filing of the charge-sheet. Thus, any statement made before an Excise Officer by an accused is obviously hit both by the provision of Section 25 of the Evidence Act as well as by the provision of Section 162 of the Code of Criminal Procedure.

Para 5

It is well settled the discretionary power of a Court should always be exercised only to achieve the ends of justice. Thus, when it appears from the facts and circumstances of the case at hand that ultimately by using such judicial discretion no fruitful result will be achieved, as the only materials against the petitioner cannot be translated into legally admissible evidence, the exercise of such a judicial discretion would only brings out a situation which would be completely an abuse of process of Court.

Para 7

**CASES CITED :-**

1) Michal Machadao and anr. **Vs** Central Bureau of Investigation and anr. Reported in 2000 SCC(cri) 609.

2) Raja Ram Vs. State of Bihar, reported in AIR 1964 SC 828

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For Petitioner : Mr. Sekhar Bose

Mr. Soubhik Mitter  
For State : Mr. Joy Sengupta  
Ms. Sreyashee Biswas

**THE COURT.** 1) In connection with a trial relating to an offence punishable under Section 46A (c) of the Bengal Excise Act, invoking Section 319 of the Code of Criminal Procedure, the prosecution moved an application before the Trial Court with a prayer for proceeding against the petitioner on the basis of the evidence of P.W. 1 and the P.W. 5. The trial Court having rejected such prayer, a criminal revision was moved before the Court of Sessions. The Court of Sessions reversed the order of the Trial Court and directed the petitioner be proceeded against in the said trial along with the accused already arraigned. The petitioner challenging the said order has moved the instant criminal revision.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused both the orders passed by the Trial Court as well as by the revisional Court and other materials on record. Considered the case laws relied upon on behalf of the parties.

3. According to the provisions of Section 319 of the Code of Criminal Procedure, in course of any enquiry into, or trial of, an offence, if it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. In the case of Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr., reported in 2000 SCC (Cri) 609, the Apex Court in paragraph 11 and 12 held as follows:

*“The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, had committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other*

*person has committed an offence. Second is that for such offence that other person could as well as be tried along with the already arraigned accused. (para 11) But even then, what is conferred on the Court is only a discretion as could be discerned from the words “the Court may proceed against such person”. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons. (para 12)*

4. The term evidence employed in Section 319 of the Code necessarily mean such evidence which constitute legally admissible evidence. In the aforesaid decision, viz., Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr. (supra) referred hereinabove the Apex Court as a note of caution also observed unless the Court is hopeful that there is a reasonable prospect of the case as against the newly brought accused ending in conviction for the offence concerned, the Court should refrain from adopting such a course of action.

5. In the case at hand, both the P.W. 1 and P.W. 5 are the officers of the Excise Department. According to the said witnesses the accused facing trial in his statement before them disclosed that he procured the contraband liquor seized from his possession from the present petitioner. Besides those alleged confession of the accused implicating the present petitioner there is no other material on record against him. According to the Section 74 of the Bengal Excise Act, an Excise Officer is empowered to investigate into an offence punishable under the said Act exercising any power conferred upon a police officer under Sections 160 to 171 of the Code and for the purpose of Section 156 of the Code of Criminal Procedure, an Excise Officer empowered under sub-section (2) of Section 73 of the Bengal Excise Act be deemed to be the Officer-in-Charge of a police station and the report which shall be submitted after conclusion of investigation be deemed to be a police report under Section 190 of the Code of Criminal Procedure. Therefore, an Excise Officer is empowered to exercise all the powers vested on an Officer-in-Charge of a police station under Chapter XV of the Code of Criminal Procedure, including filing of the charge-sheet. Thus, any statement made before an

Excise Officer by an accused is obviously hit both by the provision of Section 25 of the Evidence Act as well as by the provision of Section 162 of the Code of Criminal Procedure. In this connection it would be more apposite to refer the decision of the Hon'ble Supreme Court in the case of Raja Ram Vs. State of Bihar, reported in AIR 1964 SC 828.

6. Thus, it boils down to the fact there is no legally admissible evidence on record except the evidence of the Excise Inspectors, one of whom was the Investigating Officer of the case and other is a member of the raiding party to indicate the alleged complicity of the present petitioner in the commission of the alleged offences, which however found to be not legally admissible in evidence. It is also pertinent to note, although those Excise Inspectors claimed to have obtained such information from the accused facing the trial but at no point of time any attempt was made on their behalf to work out the authenticity of such allegations.

7. Now, question is this whether power under Section 319 of the Code of Criminal Procedure, which of course is a discretionary power of the Court should be invoked in the facts and circumstances of the present case. It is well settled the discretionary power of a Court should always be exercised only to achieve the ends of justice. Thus, when it appears from the facts and circumstances of the case at hand that ultimately by using such judicial discretion no fruitful result will be achieved, as the only materials against the petitioner cannot be translated into legally admissible evidence, the exercise of such a judicial discretion would only brings out a situation which would be completely an abuse of process of Court. In the result, this application succeeds and the order impugned is set aside. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*( Ashim Kumar Roy, J. )*