
(1968) 10 SC CK 0014

Supreme Court of India

Case No: Appeal (crl.) 27 of 1967

Romesh Chandra
Mehta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 18, 1968

Acts Referred:

- Constitution Of India, 1950 - Article 20(2), 20(3), 22(1)
- Defence Of India Rules, 1962 - Rule 126P(2)(II), 126P(2)(III)
- Sea Customs Act, 1878 - Section 167, 167(81), 169, 170, 171A, 172, 173, 182, 188
- Import & Export Control Act, 1947 - Section 5
- Customs Act, 1962 - Section 100, 101, 104, 104(1), 105, 107, 108, 111, 127, 131, 132, 133, 134, 135, 135(a), 135(b), 137, 139, 160, 160(1), 160(3)
- Evidence Act, 1872 - Section 25
- Indian Penal Code, 1860 - Section 109, 120, 193, 228
- Foreign Exchange Regulation Act, 1947 - Section 4(1), 4(3), 19, 23(1), 23(3)
- Code Of Criminal Procedure, 1973 - Section 94, 96, 173
- Bihar & Orissa Excise Act, 1915 - Section 78(3)

Citation: AIR 1970 SC 940 : (1970) CriLJ 863 : (1985) 5 ECR 2239 : (1999) 110 ELT 324 : (1969) 2 SCR 461

Hon'ble Judges: V. Ramaswami, J; K. S. Hegde, J; J. C. Shah, J; G. K. Mitter, J; A. N. Grover, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Shah, J.

The Assistant Collector of Customs filed a complaint against Romesh Chandra Mehta and four others in the Court of the Additional District Magistrate, 24 Parganas, charging them with offences u/s 120B I.P, Code read with Section 167(81) of the Sea Customs

Act, 1878, Section 5 of the Import & Export Control Act, 1947, and for specific offences committed in pursuance of the conspiracy. It was the case of the complainant that when Mehta was searched on December 13, 1962, at the Dum Dum Airport, Calcutta, diamonds and jewellery worth Rs. 1,91,000 were found on his person and currency notes of Rs. 27,000 were found in a suit-case with him and that pursuant to a statement made by Mehta diamonds, pearls and jewellery of the value of Rs. 2,61,800 and correspondence telegrams and cables bearing upon the conspiracy to smuggle gold, precious stones etc. into India from foreign countries were recovered from different places.

2. The complainant tendered in evidence at the trial certain confessional statements which he claimed were made before the Customs Authorities in an enquiry u/s 171-A of the Sea Customs Act, 1878, by Mehta and the other persons accused. Counsel for the accused objected to the admissibility of that evidence but the objection was overruled by the Trial Magistrate. The High Court of Calcutta rejected a petition invoking their revisional jurisdiction against the order of the Trial Magistrate, With special leave, Mehta has appealed to this Court.

3. Counsel for Mehta urged three contentions in support of the appeal;

(1) that the statements tendered in evidence by the Customs Officer must be deemed by virtue of Section 160 of the Customs Act 52 of 1962 to be recorded under the provisions of that Act and their admissibility may be adjudged in the light of that Act alone;

(2) that an Officer of Customs is a "police officer" within the meaning of Section 25 of the Indian Evidence Act, 1872, and a confessional statement made before him is inadmissible in evidence at the trial of the appellant and his co-accused;

(3) that the statements made before the Customs Officer were otherwise inadmissible, because Mehta and others being persons accused of an offence were compelled by the provision of Section 171-A of the Sea Customs Act. 1878, to be witnesses against themselves within the meaning of Article 20(3) of the Constitution.

4. By Section 160(1) of Act 52 of 1962 read with the Schedule to that Act, the Sea Customs Act 8 of 1878 was repealed. By Sub-section (3) of Section 160 it is provided:

"Notwithstanding the repeal of any enactment by this section,--

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made or any licence, permission or exemption granted or any assessment made, confiscation adjudged or any duty levied or any penalty or fine imposed or any forfeiture, cancellation or discharge of any bond ordered or any other thing done or any "other action taken under any repealed enactment shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act;

(b) "

5. But the admissibility of statements recorded by a Customs Officer u/s 171-A of the Sea Customs Act, 1878, depends upon the determination of the question whether the statements when made were inadmissible u/s 25 of the Evidence Act, and Article 20(3) of the Constitution. Even after the repeal of the Sea Customs Act, admissibility of the statement made in a complaint made before a Magistrate for contravention of the provision of that Act must be adjudged in the light of the taint, if any, attaching thereto when the statement was made. The first contention must, therefore, fail.

6. Section 25 of the Indian Evidence Act, 1872, enacts that "No confession made to a police officer shall be proved as against a person accused of any offence". The broad ground for declaring confessions made to a police-officer inadmissible is to avoid the danger of admitting false confessional statements obtained by coercion, torture or ill-treatment. But a Customs Officer is not a member of the police force. He is not entrusted with the duty to maintain law and order. He is entrusted with powers which specifically relate to the collection of customs duties and prevention of smuggling, There is no warrant for the contention raised by counsel for Mehta that a Customs Officer is invested in the enquiry under the Sea Customs Act with all the powers which a police-officer in charge of a police station has under the Code of Criminal Procedure. Under the Sea Customs Act, a Customs Officer is authorised to collect customs duty to prevent smuggling and for that purpose he is invested with the power to search any person on reasonable suspicion (Section 169); to screen or X-ray the body of a person for detecting secreted goods (Section 170A); to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act (Section 173); to obtain a search warrant from a Magistrate to search any place within the local limits of the jurisdiction of such Magistrate (Section 172); to collect information by summoning persons to give evidence and produce documents (Section 171-A); and to adjudge confiscation u/s 182. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve a summons to produce a document or other thing or to give evidence, and the person so summoned is bound to attend either in person or by an authorized agent, as such officer may direct, and the person so summoned is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Sea Customs Act. For purpose of Sections 193 and 228 of the Indian Penal Code the enquiry made by a Customs Officer is a judicial proceeding. An order made by him is appealable to the Chief Customs-authority u/s 188 and against that order revisional jurisdiction may be exercised by the Chief Customs-authority and also by the Central Government at the instance of any person aggrieved by any decision or order passed under the Act. The Customs Officer does not

exercise, when enquiring into a suspected infringement of the Sea Customs Act, powers of investigation which a police-officer may in investigating the commission of an offence. He is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating forfeiture and penalty. He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report u/s 173 of the Code of Criminal Procedure. He can only make a complaint in writing before a competent Magistrate.

7. In [The State of Punjab v. Barkat Ram \[1962\] 3 S.C.R. 338](#) this Court held (Subba Rao, J., dissenting) that a Customs Officer under the Land Customs Act 19 of 1924 or under the Sea Customs Act 8 of 1878 is not a police-officer for the purpose of Section 25 of the Indian Evidence Act, 1872, and that conviction of the offender on the basis of his statements to the Customs Officer for offences u/s 167(8) of Sea Customs Act, 1878, and Section 23(1) of the Foreign Exchange Regulation Act, 1947, is not illegal. Raghubar Dayal, J., who delivered the majority judgment of this Court observed :

".....that the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order.

The powers of customs officers are really not for such purpose. Their powers are for the purpose of checking the smuggling of goods and the due realisation of customs duties and to determine the action to be taken in the interests of the revenues of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines."

8. In [Raja Ram jaiswal v, State of Bihar \[1964\] 2 S.C.R. 752](#) the decision in Barkat Ram"s case was distinguished and it was observed (Raghubar Dayal, J., dissenting) that the expression "police officer" in Section 25 of the Evidence Act was not to be construed narrowly but in a wide and popular sense. The Court in that case held that an Excise Inspector or Sub-Inspector under the Bihar and Orissa Excise Act 2 of 1915 upon whom all the powers of a police officer were conferred is entitled to investigate any offence under the Excise Act and to submit a charge-sheet and on that account he must be regarded as a police officer within the meaning of Section 25 of the Evidence Act. The Court observed that the object of enacting Section 25 of the Evidence Act was to eliminate from consideration confessions made to an officer who by virtue of his position, could extract by force, torture or inducement a confession, and an Excise Officer acting u/s 78(3) of the Bihar & Orissa Excise Act, 1915, was in the same position as an officer in charge of a police station making an investigation under Ch. XIV of the Code of Criminal Procedure, and had the same opportunities of extracting a confession from a suspect.

9. In [Badku Joti Savant v. State of Mysore](#) this Court held that the officer empowered under the Central Excise and Salt Act 1 of 1944 and when making enquiries for purposes of that Act invested with powers of an officer-in-charge of a police station investigating a cognizable offence, is not a police officer within the meaning of Section 25 of the Indian

Evidence Act, and the statement of an accused person recorded by him is not hit by that section. The Court in that case distinguished the decision in Raja Ram Jaiswal's case and observed that a Central Excise Officer was invested with powers of an officer-in-charge of a police station when investigating a cognizable offence, but he had no power to submit a report u/s 173 of the Code of Criminal Procedure, and on that account he was not a police officer within the meaning of Section 25 of the Evidence Act.

10. In *P. Shanker Lali and Ors. v. The Assistant Collector of Custom, Madras*, Cr. As. Nos. 52 & 104 of 1965 Sikri, J., delivering the judgment of the Court observed that a confession made before the Assistant Collector of Customs was not inadmissible u/s 25 of the Indian Evidence Act.

11. Counsel for Mehta contended that a Customs Officer who has power to detain, to arrest, to produce the person arrested before a Magistrate, and to obtain an order for remand and keep him in his custody with a view to examine the person so arrested and other persons with a view to collect evidence, has opportunities which a police officer has of extracting confessions from a suspect, and if the expression police officer be not narrowly understood, a statement recorded by him of a person who is accused of an offence is inadmissible by virtue of Section 25 of the Indian Evidence Act. But the test for determining whether an officer of customs is to be deemed a police officer is whether he is invested with all the powers of a police officer qua investigation of an offence, including the power to submit a report u/s 173 of the Code of Criminal Procedure. It is not claimed that a Customs Officer exercising power to make an enquiry may submit a report u/s 173 of the Code of Criminal Procedure.

12. The remaining contention that a person against whom an enquiry is made by the Customs Officer under the Sea Customs Act is a person accused of an offence and on "that account he cannot be compelled to be made a witness against himself, and the evidence if any collected by examining him u/s 171-A of the Sea Customs Act is inadmissible has, also no substance. By Article 20(3) of the Constitution a person who is accused of any offence may not be compelled to be a witness against himself. The guarantee is, it is true, not restricted to statements made in the witness box. This Court in [The State of Bombay v. Kathi Kalu Oghad](#) :

""To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

To be a witness" in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing."

13. But in order that the guarantee against testimonial compulsion incorporated in Article 20(3) may be claimed by a person it has to be established that when he made the

statement sought to be "tendered in evidence against him, he was a person accused of an offence. u/s 171-A of the Sea Customs Act, a Customs Officer has power in an enquiry in connection with the smuggling of goods to summon any person whose attendance he considers necessary, to give evidence or to produce a document or any other thing, and by Clause (3) the person so summoned is bound to state the truth upon any subject respecting which he is examinee! or makes statements and to produce such documents and other things as may be required. The expression "any person" includes a person who is suspected or believed to be concerned in the smuggling of goods. But a person arrested by a Customs Officer because he is found in possession of smuggled goods or on suspicion that he is concerned in smuggling is not when called upon by the Customs Officer to make a statement or to produce a document or thing, a person accused of an offence within the meaning of Article 20(3) of the Constitution. 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. The Customs Officer does not at that stage accuse the person suspected of infringing the provisions of the Sea Customs Act with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act, he is not accusing the person of any offence punishable at a trial before a Magistrate. In [Magbool Hussain v. The State of Bombay](#), the Court held that a person against whom an order for confiscation of goods had been made in proceedings taken by Customs Officers u/s 167 of the Sea Customs Act and was subsequently prosecuted before a Magistrate for offences under the Foreign Exchange Regulation Act, 1947, could not plead the protection of Article 20(2), since he was not "prosecuted" before the Customs authorities, and the order for confiscation was not a "punishment" inflicted by a Court or judicial tribunal within the meaning of Article 20(2) of the Constitution and the prosecution was not barred.

14. In [M.P. Sharma & Ors. v. Satish Chandra, District Magistrate, Delhi and Ors \[1954\] S.C.R. 1077](#) this Court observed that a compelled production of incriminating documents by a person against whom a First Information Report under the Code of Criminal Procedure has been made is testimonial compulsion within the meaning of Article 20(3) of the Constitution. But a search and seizure of a document under the provisions of Sections 94 and 96 of the Code of Criminal Procedure do not amount to compelled production thereof within the meaning of Article 20(3). It was observed by Jagannadhadas, J., at p. 1087 :

"Broadly stated in the guarantee in Article 20(3) is against "testimonial compulsion"...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 a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in prosecution."

15. The Court further observed that the guarantee under Article 20(3) is available to the petitioners against whom a First Information, Report had been recorded.

16. In [Raja Narayanlal Bansilal v. Maneck Phiroz Mistry and Anr.](#) admissibility of "a statement made before an Inspector appointed by the Government of India under the Indian Companies Act, 1913, to investigate the affairs of a Company and to report thereon was canvassed. It was observed at p. 436 :

"... one of the essential conditions for invoking the constitutional guarantee enshrined in Article 20(3) is that a formal accusation relating to the commission of an offence, which would normally lead to his prosecution, must have been leveled against the party who is being compelled to give evidence against him."

17. Sinha, C.J., speaking for the majority of the Court in Kathi Kalu Oghad"s Case stated that:

"To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

18. In the two earlier cases M. P. Sharma"s case and Raja Narayanlal Bansilal"s Case this Court in describing a person accused used the, expression "against whom a formal accusation had been made", and in Kathi Kalu Oghad"s case this Court used the expression "the person accused must have stood in the character of an accused person". Counsel for Mehta urged that the earlier authorities were superseded in Kathi Kalu Oghad"s case and it was ruled that a statement made by a person standing in the character of a person accused of an offence is inadmissible by virtue of Article 20(3) of the Constitution. But the Court in Kathi Kalu Oghad"s case has not set out a different test for determining the stage when a person may be said to be accused of an offence. In Kathi Kalu Oghad"s case the Court merely set out the principles in the light of the effect of a formal accusation on a person, viz., that he stands in the character of an accused person at the time when he makes the statement. Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial the offence. Where a Customs Officer arrests a person and informs that person of the grounds of his arrest, (which he is bound to do under Article 22(1) of the Constitution,) for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate.

19. The decision of this Court in [Bhagwandas Goenka v. The Union of India](#) lays down no principle inconsistent with the view we have expressed. In Bhagwandas Goenka's case the appellant was charged with using a sum of 4,000 dollars borrowed by him when he was on a visit to the United States of America and with depositing cheques of the value of 500 dollars with a foreign bank in which he had an account, and thereby infringing Sections 4(1) and (3) read with Section 23 of the Foreign Exchange Regulation Act 7 of 1947. At the trial before a Magistrate the appellant contended that the information demanded and obtained from him on September 19, 1952 and May 14, 1953 by the Reserve Bank of India u/s 19 of the Foreign Exchange Regulation Act with respect to the two sums was inadmissible. This Court negatived the contention observing that no information was collected from the accused after July 4, 1955, when he was asked to show cause by the Reserve Bank why he should not be prosecuted for contravention of the various provisions of the Act with respect to the two sums. The Court observed :

"The information collected u/s 19 is for the purpose of seeing whether a prosecution should be launched or not. At that stage when information is being collected there is no accusation against the person from whom information is being collected. It may be that after the information has been collected to Central Government or the Reserve Bank may come to the conclusion that there is no case for prosecution and the person concerned may never be accused. It cannot therefore be predicated that the person from whom information is being collected u/s 19 is necessarily in the position of an accused. The question whether he should be made an accused is generally decided after the information is collected and it is when a show cause notice is issued, as was done in this case on July 4, 1955, that it can be said that a formal accusation has been made against the person concerned. We are therefore of the opinion that the appellant is not entitled to the protection of Article 20(3) with respect to the information that might have been collected from him u/s 19 before July 4, 1955."

20. u/s 19 of the Foreign Exchange Regulation Act, 1947, it is open to the Central Government or the Reserve Bank of India, if it considers necessary or expedient, to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, by order in writing, to require any such person to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or any person specified in the order with such information, book or other document. The information which was, asked for and obtained in Bhagwandas Goenka's case u/s 19 of the Foreign Exchange Regulation Act was not held to be information obtained in violation of Article 20(3) of the Constitution, for the accusation in view of the Court was made against the appellant for the first time on July 4, 1955, when the Reserve Bank of India called for an explanation of the appellant why he should not be prosecuted for contravention of the various provisions of the Foreign Exchange Regulation Act. Under the proviso to Section 23(3) of that Act it is enacted that "where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made

thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission." In the light of the proviso the Court assumed that when an authority which is statutorily authorised and bound to call for an explanation before a complaint is filed, serves a formal notice calling for explanation, a formal accusation may be deemed to be made. But that is not the position in the present case.

21. In our judgment the view expressed by Sinha, J., in [Calcutta Motor and Cycle Company v. Collector of Customs](#) that a proceeding u/s 171-A of the Sea Customs Act, 1878, being preliminary to a criminal trial any statement procured would be inadmissible under Article 20(3) there being a formal accusation relating to the commission of an offence which in the normal course may result in prosecution, is not correct. Opinion of the Court recorded in appeal from that judgment in [Collector of Customs & Ors. v. Calcutta Motor and Cycle Company](#) in which Chakravarti, C.J., observed that the protection of Article 20(3) avails even where a person is not formally accused or charged is inconsistent with the judgments of this Court already referred, cannot also be accepted as correct.

22. The views expressed by the Madras High Court in [Collector of Customs, Madras v. Kotumal Bhirumal Pihlajani](#) that:

"..... the bar under Article 20(3) of the Constitution will not be available to the statements in this case, since it is not in dispute that they have been recorded only during an investigation undertaken by the Customs Officer under Sections 107 and 108 of the Customs Act of 1952 and at a time when the deponents did not stand in the position of accused in the light of the principles stated in the decisions cited above."

and by the Bombay High Court in *Laxman Padma Bhagat v. The State*, 67 B.L.R. 317 that a person examined u/s 171-A of the Sea Customs Act, 1878, 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 are, in our judgment, substantially correct.

23. We, therefore, agree with the High Court that the statements made by Mehta and other persons accused before the Additional District Magistrate, 24 Parganas, were not inadmissible in evidence because of the protection granted under Article 20(3) of the Constitution.

Criminal Appeal No. 45 of 1968

24. On March 6, 1963, six parcels containing watches were seized by the Customs authorities at Santa Cruz Airport, Bombay. The Customs authorities recorded statements of the appellant Chitnis and attached certain documents from him. Thereafter the Customs authorities filed a complaint against Chitnis and thirteen others for offences u/s 120B I.P. Code read with Section 167(81) of the Sea Customs Act, and Section 135 of the Customs Act, 1962 read with Section 109 I.P. Code alleging that between August 15,

1952 and January 28, 1963. and1"between February 5, 1963 and March 6, 1963, the offenders had imported watches and had on that account committed offences u/s 120B I.P. Code read with Section 167(81) of the Sea Customs Act, and Section 120 I.P. Code read with Section 135 of the Customs Act, 1962, read with Section 109 I.P. Code respectively. At the trial the prosecutor tendered in evidence certain statements made before the Customs authorities by the accused. The Advocate for the accused objected to the admissibility of those statements. The Trial Magistrate rejected the contention and in a revision application filed before the High Court of Bombay the order passed by the Presidency Magistrate was confirmed.

Criminal Appeal No. 46 of 1968

25. Dady Adarji Fatakia was arrested on December 26, 1964. At that time he was found in possession of 540 watches. He was served with a summons u/s 108 of the Customs Act, 1962, and he made a statement before a Customs Officer. Thereafter a complaint was filed before the Presidency Magistrate, Bombay, against Fatakia for offences u/s 135(a) and (b) of the Customs Act, 1962, At the trial the public prosecutor supplied to the accused copies of the statements made by Fatakia. The accused Fatakia then applied to the Magistrate that the statement if tendered in evidence would be inadmissible because they were inadmissible u/s 25 of the Evidence Act or Section 162 of the Code of Criminal Procedure or under Article 20(3) of the Constitution. The contentions were negatived by the Magistrate and in a revision application to the High Court the order of the Presidency Magistrate was confirmed.

Criminal Appeal No. 47, of 1968

26. On May 30, 1965, the Customs Officers seized 11,000 tolas of gold from a room in the occupation of the appellant Poonamchand and then recorded his statement after serving him with a summons u/s 108 of the Customs Act, 1962. A complaint was filed against the appellant and two others in the Court of Additional Chief Presidency Magistrate, 8th Court, Bombay, u/s 120B I.P. Code and Section 135 of the Customs Act, and Rule 126P(2) (II) and (IV) of the Defence of India Rules read with Section 109 I.P. Code and Section 135 of the Customs Act, 1962 read with Section 109 I.P. Code. At the trial evidence was given by the Superintendent, Central Excise, Marine and Preventive Division, that the persons accused had made certain oral statement in his presence admitting their complicity in smuggling gold. An application by Poonamchand raising the contention that the statements were inadmissible u/s 25 of the Indian Evidence Act and Article 20(3) of the Constitution was rejected on the ground that the application was premature. A revision application was then filed in the High Court and it was heard with the other petitions and was rejected.

27. In the three appeals Nos. 45, 46 and 47 of 1968 the statements were made to or recorded before the Customs Officers in an enquiry made under the Customs Act, 1962. It was urged on behalf of the appellants that the statements made before the Customs

Officers exercising power under the Customs Act, 1962 are inadmissible at the trial of a person accused of an offence under the Customs Act, 1962, because of Section 25 of the Evidence Act and Article 20(3) of the Constitution.

28. The scheme of the Customs Act, 1962, relating to searches, seizure and arrest and confiscation of goods and conveyances and imposition of penalties may be briefly examined. Under Sections 100 and 101 a Customs Officer has power to search any person to whom these sections apply if the officer has reason to believe that such person has secreted about his person, any goods liable to confiscation or any documents relating thereto. Section 104 confers upon the Customs Officer power to arrest if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable u/s 135. Every person so arrested must be informed of the grounds for such arrest. Section 105 authorises any Assistant Collector of Customs to search any premises if he has reason to believe that goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things. u/s 104(3) where an officer of customs has arrested any person under Sub-section (1) he shall, for the purpose of realising such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898. By Section 107 any officer of customs empowered in that behalf by general or special order of the Collector of the 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; and (b) examine any person acquainted with the facts and circumstances of the case. Section 108 confers upon a gazetted officer of customs the power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in an enquiry which such officer is making in connection with the smuggling of goods. The person so summoned is bound to attend and to state the truth upon any subject respecting which he is examined or make statements and produce such documents and other things as may be required, and every such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Section 110 authorises the proper officer to seize such goods as he has reason to believe are liable to confiscation under the Act. Sections 111 to 127 deal with confiscation of goods and conveyances and with imposition of penalties. An appeal lies to the appropriate authority at the instance of a person aggrieved by any decision or order passed under the Act within the time specified u/s 128. u/s 130 the Central Board of Revenue may exercise revisional powers in respect of orders passed by the Subordinate Customs authorities and Section 131 authorises the Central Government on the application of any person aggrieved by certain orders specified therein to exercise the power to annul or modify such orders. Sections 132 to 139 deal with offences and prosecution. Section 135 provides, insofar as it is material:

"Without prejudice to any action that may be taken under this Act, if any person-

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation u/s 111, he shall be punishable,--

(i)

(ii)

29. Section 137, insofar as it is material, provides:

"(1) No court shall take cognizance of any offence u/s 132, Section 133, Section 134 or Section 135, except with the previous sanction of the Collector of Customs.

(2) No court shall take cognizance of any offence u/s 136,--

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Collector of Customs, except with the previous sanction of the Central Government;

(b) "

30. Customs Act 52 of 1962 invests the Customs Officer with the power to search a person and to arrest him, to search premises, to stop and search conveyances, and to examine persons, and also with the power to summon persons to give evidence and to produce documents and seizure of goods, documents and things which are liable to confiscation. He is also invested with the power to release a person on bail. He is entitled to order confiscation of smuggled goods and impose penalty on persons proved to be guilty of infringing the provisions of the Act. It is implicit in the provisions of Section 137 that the proceedings before a Magistrate can only be commenced by way of a complaint and not on a report made by a Customs Officer.

31. In certain matters the Customs Act of 1962 differs from the Sea Customs Act of 1878. For instance, under the Sea Customs Act search of any place could not be made by a Customs Officer of his own accord: he had to apply for and obtain a search warrant from a Magistrate. u/s 105 of the Customs Act, 1962, it is open to the Assistant Collector of Customs himself to issue a search warrant. A proper officer is also entitled under that Act to stop and search conveyances : he is entitled to release a person on bail, and for that

purpose has the same powers and is subject to the same provisions as the officer-in-charge of a police station is. But these additional powers with which the Customs Officer is invested under the Act of 1962 do not, in our judgment, make him a police officer within the meaning of Section 25 of the Evidence Act. He is, it is true, invested with the powers of an officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise. The expression "or otherwise" does not confer upon him the power to lodge a report before a Magistrate u/s 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate, do not make him an officer-in-charge of a police station. Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appealable and are subject also to the revisional jurisdiction of the Central Board of Revenue and may be carried to the Central Government. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue.

32. For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in *Badku Joti Savant's* case, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act.

33. It was strenuously urged that u/s 104 of the Customs Act, 1962, the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable u/s 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guilty of the offence punishable u/s 135 and information to be given to him amount, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who has been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable u/s 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an inquiry under Sections 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs Officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided u/s 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence u/s 135.

34. Section 167 of the Sea Customs Act, 1878, contained a large number of clauses which described different kinds of infractions and different penalties or punishments liable to be imposed in respect of those infractions. Under the Customs Act of 1962 the Customs Officer is authorised to confiscate goods improperly imported into India and to impose penalties in cases contemplated by Sections 112 and 113. But on that account the basic scheme of the Sea Customs Act, 1878, is not altered. 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 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 Sections 132, 133, 134 and 135 of the Act. Any statement made under Sections 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.

35. Before parting with the case, we must observe that this Court has been invited in this group of appeals to consider the question of admissibility of evidence before the trial was completed. At various stages of argument counsel asked us to make several assumptions on matters of evidence which were not before this Court. In some cases the statements made by the accused before the Customs Officer were tendered in evidence and were objected to; in other cases even before the statements were tendered in evidence, objections were raised. We may also observe that we are not concerned in these appeals to decide whether the statements relied upon were obtained from persons charged with infraction of the provisions of the Customs Act by officers having authority over them, by inducement, threat or promise having reference to the inquiry made against them. These questions, if raised, have to be decided at the trial of the appellants. The appeals fail and are dismissed.