(1983) 06 CAL CK 0001

Calcutta High Court

Case No: None

Baidyanath Basak and etc.		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: June 3, 1983

Acts Referred:

- Constitution of India, 1950 - Article 19, 20, 21, 22
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 175, 218, 219, 220
- Customs Act, 1962 - Section 108, 111, 112, 119, 121
- Evidence Act, 1872 - Section 132, 21, 24
- Foreign Exchange Regulation Act, 1973 - Section 23
- General Clauses Act, 1897 - Section 26, 3
- Penal Code, 1860 (IPC) - Section 193, 228, 323, 330, 426

Citation: (1983) CriLJ 1542

Hon'ble Judges: Manashnath Roy, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Manashnath Roy, J.
On or about 30th March 1972, Customs Officers appeared and searched premises No. 35, Nalini Seth Road, Calcutta. It has been alleged that the said officers searched the concerned premises after breaking open the door and that too in spite of objections by the petitioner and his men. It would appear that thereafter, the petitioner along with others, who were present at the spot were arrested and taken to Custom house where written statements were obtained from them and after that, those persons including the petitioner were taken to the police lock up on 30th March 1973. It is an admitted fact that the persons so arrested along with the petitioner, were released on bail on 31st March 1973, by the learned Additional Chief Presidency Magistrate, Calcutta and on 28th June 1972 a petition of complaint

was filed by the Assistant Collector of Customs for Preventive General, in the Court of the learned Chief presidency Magistrate Calcutta u/s 35 of the Gold Control Act, 1968 hereinafter referred to as the said Act read with Section 8 (1) of the same and u/s 135 of the Customs Act, 1962 herein-after referred to as the said 1962 Act. u/s 35 of the said Act, it has been laid down that nothing contained in Section 34, which deals with sale or delivery of gold by a licensed dealer or certified goldsmith, shall apply to the transfer or delivery, by a licensed dealer, of any primary gold or article to any certified goldsmith or artisan for the purpose of getting any ornaments made, manufactured, prepared, repaired or polished by such certified goldsmith or artisan and Section 8 of the said Act deals with restrictions regarding acquisition, possession and disposal of gold and Sub-section (1) thereunder lays down that gave as otherwise provided in the said Act, no person shall (I) own or have in his possession custody or control or (II) acquire or agree to acquire the ownership, possession, custody or control of, or (III) buy, accept or otherwise receive or agree to buy, accept or otherwise receive any primary gold, Section 135 of the said 1962 Act which corresponds to Section 167 (1) of the Act, 1878, deals with evasion of duty or prohibitions and is to the following effect:�
Section 135(1) 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) in the case of an offence relating to any of the goods to which Section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under Sub-section (1) of Section 136 is again convicted of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than six months.

(3) For the purposes of Sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months namely:

(i) the fact that the accused has been convicted for the first time for an offence under this Act.

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject-matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence.

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence.

(iv) the age of the accused.

2. The complaint as mentioned hereinbefore has been disclosed as in Annexure "A" to the petition and on the basis thereof, the case which was initiated was numbered as No. C. 20.97/72 of the 3rd Court of the learned Presidency Magistrate Calcutta.

3. It was claimed and contended by the petitioner that adjudication proceedings, as mentioned hereinbefore, were allegedly initiated by the purported issuance of the show-cause notice dated 20th June 1972 and thereby he was asked to show-cause why the gold as seized should not be confiscated under Sections 71(1) and 72 (2) of the said Act. Section 71. deals with confiscation of gold and the sub-sections as mentioned hereinbefore are to the following effect:

Section 71(1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been or is being or is attempted to be contravened together with any package, covering or receptacle in which such gold is found, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, it shall not be ordered to be confiscated but such other action as is authorised by this Act may be taken against the person who has, by such act or omission, rendered it liable to confiscation.

(2) Where any package, covering or receptacle referred to in Sub-section (1) contains any other goods such contents shall also be liable to confiscation.

(3) to (4)..

By the said show-cause the petitioner was also intimated to inform why penal action under the said Act should not be taken and furthermore why the gold under seizure, should not be taken or confiscated u/s 111(d) of the said 1962 Act. Section 111 is a relevant section for confiscation of improperly imported goods and any goods which are imported or attempted to be imported or are brought within the Indian Customs water for the purpose of being imported contrary to any prohibition imposed by or under the said 1962 Act or any other law for the time being in force these goods are liable to confiscation. The petitioner was also asked to show cause why there should not be an order for confiscation u/s 119 of the said 1962 Act which lays down that any goods used for concealing smuggled goods shall also be liable to confiscation and the word "goods" as used in the section has been explained, not to include a conveyance used as a means of transport, apart from asking why penal action u/s 112 of that Act which deals with penalty for improper importation of goods, should not follow and the Indian currency as seized, should not be confiscated u/s 121 of the said 1962 Act, Section 121 lays down that where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods the sale-proceeds thereof shall be liable to confiscation.

4. The petitioner has slated that the case of the adjudicating authority was that "pursuant to an information to the effect that some brokers of Sonapatti would go to the melting shop of Shri Kshetra Mohan Sil at 35, Nalini Seth Road, Calcutta, for melting of gold of foreign origin, the Customs Officers, armed with authorisations issued under the Customs Act, 1962 and Gold (Control) Act, 1968 searched on 30-3-1972, the said premises under the occupation and control of S/Shri Gopeswar Sil, Nandalal Karmakar and others. In course of search one gold bar in twisted form, along with another lump of gold was recovered, while they were still hot in a big crucible on a furnace. Further search led to the recovery of 2 pcs. of gold bars with inscriptions indicating their foreign origin along with another lump of gold kept concealed in small crucibles underneath the heep of ash besides the furnace. The petitioner was looking after the business at the material time. Besides the petitioner there were 5 other persons including Shri Dhiren-dra Nath Roy in the room. The gold bars and lumps were seized by the Custom Officers on the reasonable belief that they were smuggled and stored, acquired and dealt with in violation of the provisions of the Customs Act. 1962 and Gold Control Act. 1968. The crucibles were also seized as they were used for concealing the gold bars and lumps and used as receptacles in the act of unauthorised dealing in such gold. The shop premises of Shri Nandalal Karmakar, who was also found in the said premises, from where gold was seized, was also searched and Indian currency, amounting to Rs. 3500/- was seized on the reasonable belief that the same was the sale proceeds of the

smuggled gold along with one Rokarh Book and by his letter of 6th July 1972, reply to the said show cause to the following manner, "received the copies of this above general notices Two copies addressed to 6 persons of which I have been mentioned as No. 3, by registered post recently asking me therein to show cause, if any was given. It was also stated that I have already given in writing when I was taken wrongfully along with others by the custom staff and I have nothing more to say and it was further stated that I deny all the allegations and challenge the correctness of the cross statements referred to. I have nothing to do with the alleged seizure of gold etc. The cases are sub judice in the Court and I do not like to say anything more or appear in person."

5. It was the case of the petitioner that thereafter, another letter was addressed by him, for giving a date of personal hearing regarding the adjudication proceedings and it was also contended that unless the case, pending against the petitioner was finalised, the adjudication proceedings should be deferred. The petitioner has stated that such request was not acceded to. In such circumstances, the petitioner has stated that he did not appear before the Adjudicating Authority and further more so as he fell that the Adjudicating Authorities disbelieved his statements as contained in the show cause reply. In such view of the matter and circumstances as disclosed, the petitioner has claimed that there was violation of principles of fair play and natural justice by the Adjudicating Authorities, to come to their findings to the following effect:

Gopeswar Sil was looking after the business in the absence of his father and was present at the premises at the material time. He must have the knowledge that contraband gold was being melted in the melting shop which is evident from the fact that the door leading to the said melting shop was bolted from inside and gold bars and lumps were placed in crucible obviously for purpose of melting. Besides this, Shri Dhirendra Nath Roy, an employee of Shri Gopeswar Sil stated inter alia in his statement that Shri Sil brought 4 persons with him in the melting shop and ask Shri Roy to give four muchis whereupon those four persons took out gold pcs, and bars from their pockets and kept inside 4 muchis, He stated further that according to the instruction of his employer Shri Gopeswar Sil who was present on the spot he placed those 4 muchis on the oven. When the Customs Officers entered into the melting shop S/Shri Nanda Lal Karmakar Sam-bhunath Roy, Somenath Sen and Baidyanath Basak were present there along with Shri Gopeswar Sil. He identified them before the Customs Officers. He also states the gold seized from the oven belonged to Shri Nandalal Karmakar. One bar each of gold bearing foreign markings belonged to S/Shri Sambhunath Roy and Somenath Sen and the gold lump weighing about 6 tolas belonged to Shri Baidya Nath Basak. He removed three muchis and concealed those inside heaps of ashes as his employer and those persons shouted Customs had arrived. Remove the gold from the oven and conceal.

Having regard to the facts and circumstances of the case I impose the following penalties u/s 74 of the Gold Control Act, 1968.

1. Shri Gopeswar Sil	...	Rs. 500/-
2. Shri D. N. Roy	...	Rs. 50/-
3. Shri B. N. Basak	...	Rs. 250/-
4. Shri S. N. Roy	...	Rs. 250/-
5. Shri S. N. Sen	...	Rs. 250/-
6. Shri N. L. Karmakar	...	Rs. 250/-

Since the gold under seizure has been confiscated under the Customs Act 1962 no separate order for confiscation is passed under the Gold Control Act, 1968. The personal penalties should be deposited in the Custom House Treasury forthwith.

And in respect of the other show cause notice under Customs Act, 1962 and the Foreign Exchange Regulation the findings are as follows:

Having regard to the facts and circumstances of the case I confiscate the gold under seizure absolutely u/s 111(d) of the Customs Act, 1962. The crucibles are confiscated u/s 119 of the Customs Act.

I also impose the following personal penalities u/s 112 of the Customs Act, 1962.

1. Shri Gopeswar Sil	...	Rs. 500/-
2. Shri Dhirendra Nath Roy	...	Rs. 50/-
3. Shri B. Basak	...	Rs. 250/-
4. Shri S.N. Roy	...	Rs. 250/-
5. Shri Somenath Sen	...	Rs. 250/-
6. Shri Nandalal Karmakar	...	Rs. 250/-

The Indian currency seizure from Shri Nandalal Karmakar may be released to him as the Charge regarding it is not established. The penalty imposed should be deposited in the Custom House Treasury forthwith.

6. It was contended by the petitioner that such findings were purported and were passed, as mentioned hereinbefore, in complete denial of principles of natural justice and in utter disregard of the relevant facts and in fact, such an order was prejudicially passed behind the back of the petitioner. He has also claimed that the findings arrived at by the respondents in the concerned adjudication proceedings have the effect of interfering with the administration of justice and thereby made nugatory and infructuous, the process of law and as such, they must not be given effect to. It was the categorical claim of the petitioner that because of the pendency of the Court cases, he did not or could not set out all the relevant facts in support of his case, as that would have disclosed his defence in the Court case and that too before his trial.

7. The affidavit-in-opposition in the instant case was dated 13th March 1975 and the same was filed through Narayan Iyre Ramanathan, Assistant Collector of Customs for Preventive (Adjudication), being respondent 6. It was the case of the deponent that information was received in the Customs House. Calcutta, to the effect that some brokers of Sona-patty would go to the melting shop of Kshetra Mohan Sil at the premises as mentioned hereinbefore, for melting of gold of foreign origin and as such the Customs Officers duly empowered by the competent authority under the provisions of the said Act and the said 1962 Act, went to the concerned premises, which was under the occupation and control of Gopeswar Sil, Nandalal Karmakar and others. It has been stated that the Customs Officers took up their position to ensure that the contraband gold might not be removed from the premises in question and as the door of the premises was bolted from inside those officers had to break open the door to secure ingress into the room. It was the deponent''s case that independent witnesses were requisitioned at the concerned premises and in their presence, search was carried out He has stated that one Gopeswar Sil, son of Kshetra Mohan Sil, who was looking after the house was present, being one of the six persons noticed in the room at the material point of time and in course of search one gold bar in twisted form along with another lump of gold was recovered from the furnace in hot state and contained in a big pot in the said room on the first floor and on further search, two pieces of gold bars with foreign inscriptions, indicating their foreign origin along with another lump of gold, kept concealed in a small pot under heap of ashes by the side of the furnace were recovered. The deponent has stated that these gold bars along with the lumps of gold were seized by Customs Officers on reasonable belief that they were smuggled, stored, acquired and dealt with in violation of the provisions of the said 1962 Act and the said Act. The containers were also seized, as they were used for concealing the gold bars and gold lumps and used as receptacles in the act of unauthorised dealing of the concerned gold.

8. It was the further case of the deponent that the shop situated in the ground floor of the premises was under the occupation and control of Shri Nandalal Karmakar and the same was also searched in the presence of witnesses and as a result of such search, a sum of Rs. 3500/- of Indian currency along with a Rokarh Khata was recovered. The said amount was also seized on the reasonable belief that the same was the sale proceeds of the smuggled goods. It has been stated further that several items of documents were also seized on the ground that they would be useful for the purpose of proceedings under the said 1962 Act. The deponent has further stated that two search lists were prepared one for the melting shop under the control of Gopeswar Sil and another in respect of jewellery shop, under the occupation and control of Nandalal Karmakar at the ground floor. It has been stated that immediately after the search and seizure, statements were given voluntarily before the Custom Officers by Shri Gopeswar Sil Somenath Sen Dhirendra Nath Roy, Sambhunath Roy, Nandalal Karmakar and Baidyanath Basak and all of them were

present at the material point of time inside the melting shop. The deponent has further stated those persons were summoned u/s 108 of the said 1962 Act to appear in the Custom House for deposing in the matter and the petitioner Baidya Nath Basak along with others, appeared in obedience to the summons and made further voluntary statements.

9. It was the case of the deponent that the petitioner along with others was arrested and produced before learned Additional Chief presidency Magistrate, Calcutta on 31st March 1972, when they were enlarged on bail and subsequent to that, the petitioner appeared before the Custom Officers and made further voluntary statements and then the show-cause notice was issued on 28th June 1972. The deponent has admitted that the petitioner, in a letter of 6th July 1982, addressed to respondent 6 as mentioned above, amongst others, contended that the case was sub judice in Court, as such, he was not willing to say anything more or appear in person. It was categorically stated and claimed by. the deponent that the Customs Officers concerned were discharged by the learned Magistrate from the charges as made against them by Shri Dhirendra Nath Roy in the concerned complaint filed under Sections 448 426 330 and 323 of the I.P.C. for non-compliance of the procedure laid down u/s 145(2) of the said 1962 Act and such order was passed on 25th July 1972 in respect of the complaint which was filed on 4th April 1972 by the said Shri Roy. It was the deponent''s assertion that the petitioner was given appropriate and several opportunities to appear for personal hearing, which he did not avail of intentionally, negligently and wilfully. He has stated that in spite of repeated opportunities given to the petitioner he chose not to appear in the adjudication proceeding and the contentions of the petitioner that his right of defence in the pending criminal proceedings would be prejudiced in case he was required to file his defence in the disciplinary proceedings, was baseless, as the adjudication proceeding is an independent one than that of a proceeding in Court. In any event, the deponent has denied any violation of principles of natural justice in the instant case and he has asserted that the adjudication proceedings were quite independent to that of the proceedings pending in Court. In support of his submissions he has referred to Section 127 of the said 1962 Act, which lays down that the award of any confiscation or penally under the said Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chap. XVI of the said Act or under any other law and he has also stated further that such proceedings and penalty in an adjudication proceedings, would not be barred in any way or affect the proceedings pending in a court of law under the provisions of any other law.

10. There has been no reply to the above affidavit-in-opposition and it should also be noted that on the basis of an application for addition of parties dated 20-1-1975, the Chief Metropolitan Magistrate Bankshall Street Calcutta-1 and the Third Court of the Presidency Magistrate new Metropolitan Magistrate Bankshall Street Calcutta-1 were added as party respondents 1-10 respectively but ultimately the Rule against

them was discharged for violation of the Court''s order dated 18th July 1975 and more particularly for non-filing of the necessary requisites.

11. It must also be noted that the points of law as involved being the same in Civil Rules 507 and 508 (w) of 1974, the said two Rules along with Civil Rule No. 1163 (w) of 1974 were heard together by consent of parties and they would be disposed of by one judgment.

12. On similar pleadings and facts as above and the order as impeached being common, Mr. Majumdar put forward his arguments and made submissions in Civil Rule No. 507 (w) of 1974 Sambhu Nath Roy v. Union of India). He argued that Somenath Sen, one of the claimed accused persons, by his several letters and representations asked the office of the Collector concerned, to furnish him with copies of several documents and to stay the concerned proceedings pending decision in the criminal cases as initiated against him and others. It should be noted that the copies of documents as asked for, were furnished and supplied and the said Shri Sen was informed that Customs adjudication proceedings being distinct and different from criminal proceedings, the departmental proceedings could not be kept pending and he was also intimated that any reply from him, would be duly considered. The said Shri Sen, of course, by his letter dated 16-12-1972, filed his explanation to the show cause notice wherein he also reiterated his stand as mentioned hereinbefore it was claimed by the petitioner that even though he was asked to appear at the personal hearing, no personal hearing, was in fact given and apart from such violation, which meant and constituted violation of principles of natural justice, there was violation of such principle also, as the documents asked for were not duly given. It was claimed that a personal hearing, which was asked for, was mandatory in this case, the more so when the adjudication proceeding was a quasi judicial one. In support of the above submissions, reference was made. to the case of Ramchand Jagdishchand Vs. The Deputy Collector of Customs, Calcutta and Others, , a determination under the provisions of Sea Customs Act, 1878, where it has been observed that an order of confiscation u/s 167 (37) Sea Customs Act, of goods imported, made by the Customs Officer after adjudication u/s 182, is quasi judicial in character and so a writ of certiorari could go, if there is an excess of jurisdiction. In that case, it has also been observed that ii the High Court finds an order of confiscation of imported goods and penalty to be illegal, court has power to order refund of such penalty or increased duty as levied and paid. Mr. Majumdar in view of the aforesaid determinations claimed that, the proceedings in this case were quasi judicial in character and as such also personal hearing was required.

13. Mr. Majumdar then claimed that since in the pending criminal proceedings the petitioner had and has the right of silence, so, unless such proceeding is disposed of, he cannot be made or forced and asked to disclose his defence, as that would ultimately affect his defence in the pending criminal proceedings, To establish the above submissions, reference was made to the case of Veera Ibrahim Vs. The State

of Maharashtra, , where, it has been observed that in order to claim the benefit of the guarantee against testimonial compulsion embodied in Article 20(3) it must be shown, firstly, that the person who made the statement was "accused of any offence", secondly, that he made this statement under compulsion. Only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution would fall within the ambit of the phrase "accused of any offence" and when the statement of a person was recorded by the Custom Officer u/s 108, that person was not a person "accused of any offence" under the Customs Act. An accusation which would stamp him with the character of such a person was levelled only when the complaint war. filed against him, by the Assistant Collector of Customs complaining of the commission of offences u/s 135(a) and Section 135(b) of the Customs Act, apart from holding that the mere facts that at the relevant time the person was arrested on suspicion of having committed an offence u/s 124 of the Bombay Police Act and a panchanama had been prepared seizing the goods were immaterial when neither the case was registered nor the F.I.R. was recorded by the Police. It has also been held in that case that a statement in order to amount to a "confession" must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of an incriminating fact, however grave, is not by itself a confession. A statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged cannot amount to a confession and where a person (who was ultimately prosecuted u/s 135(a) of the Customs Act) in his statement u/s 108 of the Act before the Inspector of Customs claiming to be innocent staled that he was not aware that the packages which were loaded in the truck were contraband goods and alleged that the goods were not loaded under his instructions, these statements even if taken cumulatively did not amount to admission of all facts which constitute offence u/s 135 of the Customs Act and as such it was not a "confession" within Section 24 of the Evidence Act, when it had not been shown that the Customs Officer though a person in authority had offered any inducement or held out any threat or promise to the accused. Such statements are not barred u/s 24 but are admissible u/s 21 as an admission of incriminating facts.

14. Thereafter, reference was made to the case of Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others, , which was a case under Customs laws and where amongst others, the principles underlying Article 20(3) of the Constitution, were discussed and determined. In the case under consideration, it has been observed that the term ''Offence'' has not been defined in the Constitution, but the definition contained in Section 3(38), General Clauses Act, under which ''offence'' means ''any act or omission made punishable by law for the time being in force'', will apply, and even breaches of the Customs laws entailing a monetary penalty or forfeiture of the goods concerned would be offences as contemplated by Article 20(3). It has also been observed that the protection afforded by Article 20(3) is available to a person accused of an offence not merely with

respect to the evidence to be given in the court room in the course of a trial, but it is also available to him at previous stages if a formal accusation had been made of the commission of an offence which might in the normal course result in prosecution and thus where in the case of notices issued u/s 171-A of the Sea Customs Act to certain per-, sons to appear before certain customs officials and to produce certain documents, it appeared from the accusations made in the search warrants at the instance of the Customs authorities and those made in one of the notices by the Customs authorities themselves, that the accusations of criminal offences could not be excluded, it has been held that the requirements of Article 20(3) were satisfied and the protection under the Article was available to the persons concerned. In that case it has further been indicated that if the principle underlying Article 20(3) be that any forcible and compulsory extortion of a man''s own testimony or his private papers, to be used as evidence to convict him of crime, must be forbidden, there is no reason for holding that the protection of the Article will be available only to a person who has been formally accused or charged. Even if a man has been named as a person who has committed an offence, particularly by officials who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Article 20(3) and a situation has arisen in which he can claim protection against being compelled by a coercive process to furnish evidence against himself and the language of Article 20(3) is ''to be witnesses'' and not ''to appear as witnesses'' and therefore the extortion of any evidentiary material even at the stage of investigation which may aid the building up of a case against them must be within the condemnation of the Article. This meaning of the constitutional guarantee against self-incrimination appears to be self-evident, because if officers, competent to prosecute a man, can, after telling him that according to their information he has committed an offence, extort oral or documentary testimony from him which may be used directly or indirectly to bring the charge home to him the guarantee must be a very hollow guarantee indeed. As to when protection under Article 20(3) would be available, it has been observed in that case while dealing with Section 171-A of the Sea Customs Act, 1878 that there is enough compulsion in the terms of Section 171-A it-self, but when one takes the provisions of the section along with the sanctions imposed by the I.P.C., one must find, so far as these provisions go, the compulsion overwhelming. It follows that if by being compelled to tell the truth, the person summoned under the section is compelled to make a statement which incriminates him, or if by being compelled to produce "all documents", he is compelled to produce a document which shows him as having committed an offence, he is clearly compelled to be a witness against himself. But this, it will be noticed, involves an assumption that the person summoned will be asked questions which he cannot answer truthfully without incriminating himself and that he possesses some documents which will incriminate him if produced and it cannot however be held that Section 171-A authorising issue of such notice is ultra vires the Constitution and therefore void in so far as it enables the Customs Authorities to summon a person accused of an offence either to appear or to

produce documents which are likely to incriminate him. The section only provides that any person may be summoned either to appear or to produce specified documents or all documents of a certain description. It would thus seem that no certainty of a violation of Article 20(3) is inherent in the section, but that a possibility of its violation may arise only in individual cases in the course of the application of the section. If so, it would seem to be more logical to hold that the section, as such, is not ultra vires, but it cannot be relied on as authorising extraction of answers or extortion of documents which will incriminate the person summoned if he has been accused of an offence, apart from holding that in any event, all statutes must yield to the Constitution and therefore it will be correct to hold that Section 171-A, as such, is not bad, but the person summoned under its provisions will necessarily be entitled to claim the Constitutional privilege as soon as he is asked to answer a question or produce a document which he cannot answer or produce without incriminating himself, if he has previously been accused of an offence but it would have been certainly better if Section 171-A of the Sea Customs Act contained an exception as given in Sections 161 and 175, Criminal P.C., but since all laws made by the Legislature must be subject to the Constitution, the effect of the section even in the absence of such an exception is the same. While dealing with the principles underlying and the duty ot Court under Article 20(3) it has been observed that if a person accused of an offence refuses to answer a question on the ground that by answering it he will incriminate himself or to produce a document on the ground that it will incriminate him, he will in a way be admitting his guilt and yet if effect is to be given to Article 20(3) of the Constitution, he will in effect be protected from being compelled to furnish evidence of his admitted guilt and protected even by the issue of, if necessary, a writ. This may seem odd, but in balancing the advantages of an effective detection of crime, with information collected from all sources, against the observance of civilized standards of enquiry and the upholding of the dignity of man, the framers of our Constitution, like those of the Constitution of America, have given preference to the latter. The objection to an intrusion into a man''s privacy or his personal degradation in the course of eliciting evidence of a suspected kind is rooted in the consciousness of peoples who value the liberty of the individual and the right to a protection from such intrusion or degradation has come to be regarded as one of the fundamental righls and the Courts are to take the Constitution as it is and although the growing resourcefulness of criminals or other offenders and the expansion of the ramifications of crime may at times force reflections on the justness of the immunity, yet the only concern of the Courts is to give effect to the policy enshrined in the Constitution. So far as the Constitution assures any immunity to a person accused of crime, the Courts must secure it for him. Reference was also made bv Mr. Majumdar to the determination in the case of Nandini Satpathy Vs. P.L. Dani and Another, , where it has been observed that Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself; and Section 161(2), Cr. P.C. enjoins that any person supposed to be acquainted with the facts and circumstances of the case

shall be bound to answer truly all questions relating to such case put to him by any police officer making an investigation under Chap. XII of the Code, other than questions the answers to which would have the tendency to expose him to a criminal charge or to a penalty or forfeiture. It should be noted that specific, special and pointed reference was made to para 21 of this judgment, where the proper perspective of Article 20(3) and Section 161(2) of the Cr. P.C. was indicated as back to the constitutional quintessence invigorating the ban on self-incrimination. The area covered by Article 20(3) and Section 161(2) is substantially the same. So much so, we are inclined to the view, terminological expansion apart, the Section 161(2) of the Cr. P.C. is a parliamentary gloss on the constitutional clause. The learned Advocate General argued that Article 20(3) unlike Section 161(1) did not operate at the anterior stages before the case came to court and the accused''s incriminating utterance, previously recorded, was attempted to be introduced. He relied on some passages in American decisions but, in our understanding, those passages do not so circumscribe and, on the other hand, the landmark Miranda ruling did extend the embargo to police investigation also. Moreover, Article 20(3), which is our provision, warrants no such truncation. Such a narrow meaning may emasculate a necessary protection. There are only two primary queries involved in this clause that seals the lips into permissible silence: (i) Is the person called upon to testify ''accused of any offence''? (ii) Is he being compelled to be witness against himself? A constitutional provision receives its full semantic range and so it follows that a wider connotation must be imparted to the expressions ''accused of any offence'' and ''to be witness against himself. The learned Advocate General influenced by American decisions rightly agreed that in expression Section 161(2) of the Code might cover not merely accusations already registered in police stations but those which are likely to be the basis for exposing a person to a criminal charge. Indeed this wider construction, if applicable to Article 20(3) approximates the constitutional clause to the explicit statement of the prohibition in See 161(2) This latter provision meaningfully uses the expression expose himself to a criminal charge''. Obviously these words mean not only cases where the person is already exposed to a criminal charge but also instances which will imminently expose him to criminal charge. In Article 20(3) the expression accused of any offence'' must mean formally accused in praesenti not in future-not even imminently as decisions now stand. The expression ''to be witness against himself means more than the court process. Any giving of evidence, any furnishing of information if likely to have an incriminating impact, answer the description of being witness against oneself. Not being limited to the forensic stage by express words in Article 20(3), we have to construe the expression to apply to every stage where furnishing of information and collection of materials take place. That is to say, even the investigation at the police level is embraced by Article 20(3). This is precisely what Section 161(2) means. That sub-section relates to oral examination by police officers and grants immunity at that stage. Briefly the Constitution and the Code are conterminous in the protective area. While the Code may be changed, the Constitution is more enduring. Therefore we have to base our

conclusion hot merely upon Section 161(2) but on the more fundamental protection, although equal in ambit, contained in Article 20(3).

15. In addition to the cases as mentioned above, reference was also made to the case of Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, , in which case by a detention order the detenu was detained with a view to preventing him from engaging in transporting smuggled goods. In passing the detention order the detaining authority based its decision on the detenu''s confessional statement made earlier before the Customs Officers. The said confessional statements were subsequently retracted by the detenu at the first available opportunity while he was in judicial custody and on such facts it was held that the question whether the confessional statements recorded earlier were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority the other were neither placed before nor considered by the detaining authority it was held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the detention order invalid and illegal.

16. On the facts and pleadings and on the basis of the determinations as cited, the point involved for consideration in this case would be when a person is deemed to be an accused and if the Criminal proceedings is required to be stayed for avoiding any prejudice to the petitioner for disclosure of his defence in the Departmental proceedings and the petitioner, if at all can claim the right of silence and above all what should be the extent and application of Article 20(3). Admittedly, there are two separate actions and the petitioner has shown cause in the manner as indicated hereinbefore,

17. It was claimed by the petitioner that the disposal of the representation dated 12-2-1973 as disclosed in Civil Rule No. 507 (w) of 1974 by the reply dated 27-2-1973 as disclosed in that Rule was not a proper disposal, as the points as pleaded were not duly considered, and such was also the point involved in the other Rules. While on the question of Article 20(3) further reference was made to the case of Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, , where it has been observed that a person against whom a F.I.R. is lodged alleging offences inter alia under Foreign Exchange Regulation Act, being a "person accused of an offence" is entitled to the protection under Article 20(3). Hence he cannot be compelled to be witness against himself. He, however, cannot deny to give information regarding matters which do not tend to incriminate him in proceedings against him under that Act. In view of the above determinations it was claimed that the petitioner could not be asked or forced and compelled to disclose his defence, which would ultimately be

his defence in the criminal proceedings, before hand. Apart from the several determination under Article 20(3) as indicated hereinbefore, a reference was further " made to the determinations in the case of Shankerlal Vs. Collector of Central Excise, Madras and Another, , wherein it has been observed that where notices u/s 171-A, Sea Customs Act 1878, are issued to the petitioners alleging that there is reason to believe that the goods mentioned in the schedule attached to the notices have been imported without payment of customs duty, thus making the petitioners liable to the imposition of penalties u/s 161(8) of the Act, the petitioners are not persons accused of any offence and they are bound to appear in obedience to the summons issued to them and answer questions that may be put to them. If they are asked questions the answers to which are likely to incriminate them, it is open to them to claim the protection provided by Article 20(3) of the Constitution. If that claim is overruled and they are compelled to answer those questions then such answers will not be admissible in evidence against them should they be at a later stage prosecuted in a criminal court and in such a case the position under the existing law may be thus summarised: (1) When they conduct proceedings which may terminate in the confiscation of goods or the imposition of penalties which they can themselves impose, without reference to any criminal court, Customs officers are not acting as courts of law and the proceedings before them are not judicial proceedings except for the limited purposes of Sections 193 and 228, Penal Code. (2) To the persons examined in such proceedings, Section 132, Evidence Act, does not apply of its own force. (3) But as they are empowered to prosecute for contraventions of the Sea Customs Act the position of Customs Officers will in certain respects be analogous to that of police officers acting on information relating to a cognisable offence. (4) A person who has been examined by the Customs Officer will not be in the position of an accused till it can be fairly and properly said that he is likely to be proceeded against in a criminal court. (5) Though the question when a person becomes an accused person depends on the decision that the departmental officers may take, they cannot, by merely pretending that they have not made up their minds circumvent the provisions of Article 20(3) of the Constitution. (6) Whether a witness or a suspect has become an accused person in any particular instance is substantially a question of fact.

18. It was then contended that under the said Act, the adjudication was required to come to or arrive at a finding with regard to the character and quality of the gold as seized viz whether they were primary gold or not and such decision not having been arrived at the entire proceeding would be a nullity. Even though this point has not been taken specifically, it can be observed that any determination on such point at this stage would not be necessary, as the same would not be relevant at the present moment in view of the challenge as thrown. Mr. Majumdar of course claimed that whether the gold as seized was primary gold or not, would be jurisdictional fact and such submissions were sought to be established on the basis of the determination in Sumanlal Parekh and Others Vs. Collector of Central Excise and Customs, W.

Bengal and Others, .

19. The argument for the respondents were by two sets of lawyers. In Civil Rules 507-508 (W) of 1974. Mr. Sanyal claimed that in both the cases, the persons charged applied for personal hearing, which was granted and since the order was made thereafter, there was no acting without jurisdiction. He also claimed that the proceedings would not be maintainable, as there were available remedies in the statute and they have not been availed of. Mr. Sanyal contended that the language or terms in Article 20(3) or the catch words used therein being "accused of an offence" and since the Collector in an adjudication proceeding would not be acting as a Court so such terms in Article 20(3) would not help them or could come to their aid. In support of the above reference was made to the case of Romesh Chandra Mehta Vs. State of West Bengal, , where amongst others, dealing with Article 20(3), it has been observed that 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. 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. Normally a person stands in the character as an accused when a F.I.R. 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 trying 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 purposes 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. Hence a person against whom an enquiry is made by the Customs Officer under the Sea Customs Act is not a person accused of an offence and the evidence, if any, collected by examining him u/s 171-A of the Sea Customs Act is not inadmissible and in that view of the matter Mr. Sanyal categorically claimed that the petitioner cannot claim the protection of Article 20(3). It was further claimed by Mr. Sanyal that the onus to prove innocence or u/s 111(d) of the said Act, which lay very heavily on the petitioners, and the same was not at all and duly discharged.

20. On the question of the trials in the instant case and if they can go or be continued together, Mr. Sanyal contended that adjudications being separate and so also the claims, the trials in this case can be continued. In support of such submission, reference was also made to Sections 218 and 219 of the Cr. P.C. 1973. The former Section lays down that (i) for every distinct offence for which any person is accused, there shall be a separate charge, and every such charge shall be tried

separately; provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try all or any number of the charges framed against such person and (2) nothing in Sub-section (i) shall affect the operation of the provisions of Sections 219 220 221 and 223 of the Code. Under the ether section, three offences of the same kind and committed within a year may be charged together. The above claims regarding joint trial were, of course, opposed and disputed in view of the different characters of onus as are sought to be placed and required to be discharged under the two Acts under consideration in this case.

21. Mr. Das appearing for the respondents in Civil Rule, 1163 (W) of 1974, also contended that if proceedings are different, which was the case in this case, they can go or can be continued side by side. He claimed that the adjudication before the Customs authorities, being only in respect of goods suspected to be smuggled any determination would be determination in rem while proceedings under the Criminal P.C. being offences against the State, the determination would be in personam and such and above being the position, the simultaneous continuation of proceedings would not give rise to double jeopardy and as such, Article 20(3) would be no bar or of any help or assistance to the petitioners. On a reference to Section 127 of the said 1962 Act, which lays down that the award of any confiscation or penalty under that Act by an officer of Customs, shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI or under any other law and also to Section 135 as quoted hereinbefore, Mr. Das claimed that the two proceedings could be continued simultaneously. It was contended by Mr. Das that the determinations in the cases of Romesh Chandra Mehta Vs. State of West Bengal, Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, and Nandini Satpathy Vs. P.L. Dani and Another, , being on different facts and circumstances would have no application in the facts of this case.

22. In reply, Mr. Majumdar, after refuting the submissions as indicated hereinbefore contended that as there was admittedly no determination and findings about primary gold or there was any due finding that they were of foreign origin and mere markings without the due proof, cannot establish such origin, the proceedings as initiated must be quashed as being initiated without authority, jurisdiction and irregularly. It was specifically claimed by Mr. Majumdar that in view of the determinations in the case of Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, and the observations as made therein, and which are indicated hereinbefore since the petitioners were accused of offences as indicated in the concerned criminal proceedings, they would be entitled to the necessary protections under Article 20(3) and as such they could not be compelled to be a witness against themselves by making and filing statements in the Departmental proceedings. Mr. Majumdar also claimed that the findings arrived at or the determinations made would also be incapable and irregular, in view of the observations in the case of Neithanga Hmar and Another Vs. Assistant Collector of Central Excise and Land

Customs and Another, . On the facts of that case it has been held that where certain provisions of an Act are by means of a legal fiction, deemed to have been imposed under the provisions of another Act and the structure of that Act is thereby made applicable, it is an instance of referential legislation by means of a legal fiction and not of incorporation proper of one statute in another and the provisions of enactments and particularly of penal enactments have to be strictly construed and particularly so, when such provisions relate to shifting the burden of proof to the accused. Thus, for prosecutions u/s 23 Foreign Exchange Regulation Act and Section 7 Land Customs Act in the instant case independent of the prosecution u/s 167 (81) Sea Customs Act, the presumption in Section 178A Sea Customs Act will not be available to the prosecution. It has also been observed that such fact would indicate that prosecutions under all the 3 enactments together in a single trial will not be proper, as the burden of proof for the prosecution under the Sea Customs Act will be different from the burden in the prosecutions under the Foreign Exchange Regulation Act and the Land Customs Act and a joint trial will therefore be highly prejudicial to the accused. It is for the Customs Authorities to make up their minds under which enactment they would proceed when there are violations of the penal provisions of all the enactments. If they decide to proceed u/s 167 (81) of the Sea Customs Act in a Criminal Court, it will not be proper for them to join in the same prosecution the offences under the other enactments, as it will prejudice the trial under the other enactments. The Legislature has made the provisions of the Sea Customs Act applicable to the violations of the penal provisions in the other enactments referred to above. in such a manner that three prosecutions can be launched u/s 167 (81) of the Sea Customs Act for such violation. So, if the Customs Authorities want to make use of Section 178-A of the Sea Customs Act, it will be better that they confine the prosecution to one u/s 167 (81) of that Act.

23. In dealing with the question of presumption u/s 123 (1) of the said Act. Majumdar on a reference to the determinations in the case of Assistant Collector Customs and Another Vs. Mukbujusein Ibrahim Pirjada, contended that existence of foreign markings cannot lead to such a presumption and such markings would at best be hearsay evidence. That determination was made following the observations of the Privy Council in the case of Comptroller of Customs v. Western Lectric Co. Ltd. 1966 AC 367. In the Privy Council said case, the respondents, acting innocently presented a customs import entry form giving as the country of origin of various articles imported from New Zealand either Australia or the United Kingdom. On an examination by a customs officer the goods were found to be marked "Denmark" or "made in U. S. A." and an authorised agent of the respondents presented a post entry form for additional duty in which the place of origin of the goods was stated to be Denmark or the U. S. A. The respondents'' Managing Director stated that he had no knowledge of the origin of the goods apart from what was stated on the invoices received from New Zealand. The Magistrates Court convicted the respondents of making a false declaration in a customs import entry form contrary to Section 116 of

the Customs Ordinance. The Supreme Court allowed an appeal by the respondents and quashed the conviction. On the prosecutor''s appeal, seeking the restoration of the conviction on the ground of the admission that the origin of the goods had been wrongly declared it was held dismissing the appeal that an admission by a man of something of which he knew nothing was of no real evidential value and that the. admission made by the respondents'' agent on reading the marks and labels of the goods was of no mote evidential value than the marks and labels themselves, so that the admission was not of such evidential value as to support the conviction. Further reference while on the question of presumption u/s 123 (1) and (2) of the said Act was made to the case of Assistant Collector of Customs Vs. Pratap Rao Sait and Another, where also it has been observed that the existence of foreign markings cannot be taken as proof of fact of foreign origin of goods and such markings would be of hearsay evidence. 24. Article 19 gives a list of individual freedoms and postulates in the various clauses the restrictions that may be placed upon them by law and Article 20 gives protection in respect of conviction for offences and such protection extends to non-citizens also. In fact. Articles 20 21 and 22 are primarily concerned with penal law or enactments or other laws under which the personal safety and liberty of persons could be taken away in the interests of the society. Article 20(1) lays down the principle that no one should be made to suffer any punishment for any act or omission unless such act or omission is an offence under the law in force at the time of commission of the act. What is prohibited under the clause is only conviction or sentence under an ex post facto law and not the trial thereof. Such clause also provides that an accused shall not be liable to any higher punishment for his offence than what is permitted by the law as in force on the date of the offence. The proceedings contemplated in the Article as observed in the case of Maqbool Hussain Vs. The State of Bombay, are of a criminal nature before a Court of law or a Judicial Tribunal. It is also the underlying idea of Clause (2) of the Article or the fundamental principle thereof, on the basis of the celebrated decisions that no one should be placed in jeopardy twice for the same offence and Clause (3) postulates that no one should be compelled to give evidence against himself in a criminal case.

25. In this proceedings, we are really concerned with the third clause and not the others and that too on consideration of the pleadings as indicated hereinbefore and more particularly when the real point to be decided and as indicated hereinbefore would be, whether the petitioners who were accused of offences in the concerned Criminal Proceedings, would be entitled to the necessary protections under Article 20(3) and as such if they could be compelled to be witnesses against themselves by filing statements in the departmental proceedings. "Penalty" as observed in the case of Kedar Nath Bajoria Vs. The State of West Bengal, . would mean punishment for the offence and would not include any other remedial measure provided for removing the mischief. Such word "penalty" shows that Article 20(1) has application only to punishments for offences. The use of the word "punishment" in Article 20(2),

in terms of the determinations in Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, or Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, , means a judicial penalty, awarded by a Criminal Court, as distinguished from statutory authorities and would not include other penalties e. g. disciplinary action in the case of public servants or penalties as observed in the series of determinations, starting from the case of Maqbool Hussain v. State of Bombay 1953 Cri LJ 1432 (SC)) supra. Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another, Thomas Dana Vs. The State of Punjab, the other cases as mentioned hereinbefore and those of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, under the said Act. Article 20(2) enacts as a matter of Fundamental Rights the well known principle of criminal jurisprudence that no one should be put in jeopardy twice for the same offence and in fact in Maqbool Hassain''s case (supra), it has been observed that Article 20(2) incorporates within its scope the plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribes it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence apart from holding that the words "before a Court of law or judicial tribunal" are not to be found in Article 20(2), but in order to invoke the protection of Article 20(2). there must have been a prosecution and punishment in respect of the same offence before a Court of law or a tribunal required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up/by a statute but not required to proceed on legal evidence given on oath. The Article contemplates proceedings of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context means an initiation or starting of proceedings of criminal nature before such a Court or tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure and a true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites:&#65533; (1) the presentation not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact,'' the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on. the evidence (3) if the dispute between them is a question of law, the submission of legal argument by the parties and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found including where required a ruling upon any disputed question of law.

26. The provisions of Section 26, General Clauses Act, on construction resemhle those of Article 20(2) and notwithstanding the fact that the section permits a second trial after a previous one and acquittal, the provisions are (not?) unconstitutional.

But under those provisions of the General Clauses Act and Article 20(2), a double punishment is prohibited, so, an Act under which such double punishment would be permissible, would be void being repugnant to Article 20(2). It should of course be noted that the principle of issue estoppel would be different from the principle of double jeopardy. In order to attract the principle of issue estoppel there must have been distinctly raised and appropriately decided the same issue in the earlier criminal trial between the same parties.

27. Article 20 which is in the category of the freedom described as a Right to Freedom protects all persons in respect of conviction for offences. Clause (1) provides that no person shall be-convicted of any offence except for violation of a law in force at the time of commission of the act and the person. So charged of an act or offence cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the commission of the offence. Clause (1) carries the usual bar against ex post facto laws. Clause (2) protects persons from double jeopardy by providing that no person shall be prosecuted and punished for the same offence more than once. This in fact is the second constitutional prohibition on legislative power and Clause (3) lays down that a person accused of an offence shall not be compelled to be a witness against himself. This in fact is the last principle of limitation on legislative power, which means prohibition against self-incrimi-nation. This clause guarantees immunity against self-incrirnination viz. no one can be compelled to answer any questions that would expose him to criminal liability or penalty or forfeiture.

28. The main question of application or availability of the provisions of Article 20(3) will have to be considered, determined and dealt with on interpretation of the provisions of the said Act, which should be Section 127, corresponding to Section 186 of the Act of 1878. The said Section 186 contained that the award of any confiscation, penalty or increased rate of duty under that Act by an officer of Customs shall not prevent the infliction of any punishment to which the person alfected thereby is liable under any other law. Thus the said Section 186 provided that the award of any confiscation or penalty under the Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby would be liable under the provision of Chap. XVI of the Acts, which deals with offences and prosecution under any other law. It should be noted that the considered opinion or view on the point is that the Sea Customs Authorities are not Judicial Tribunals and the adjudication of confiscation, increased rate of duty or penalty under the said Act of 1878. does not constitute a judgment or order of a Court or Judicial Tribunal, necessary for the purpose of supporting the plea of double jeopardy. On the basis of the determinations in the case of Maqbool Hussain v. State of Bombay 1953 Cri LJ 1432 (SC) supra it can be deduced that when the authorities under the 1878 Act confiscate the concerned gold, neither the proceedings taken before the Sea Customs authorities constituted a prosecution nor the order of confiscation constitutes a punishment inflicted by a Court or Judicial

Tribunal. The person prosecuted, could not be said by reason of those proceedings before the Customs authorities, to have been prosecuted/punished for the same offence with which he was charged in the criminal proceedings. The reimposition of a civil penalty e. g. confiscation, a seizure or a penalty, by the administrative agencies to implement the incidents relating to law viz. Income Tax, customs etc. will not thus absolve the wrong-doer from liability to criminal proceedings if he is liable upon these identical facts. In facts, such imposition of civil penalty would not amount to a conviction and sentence under the criminal law and thus to attract the application of ''double jeopardy''. Since the provisions of Section 127 of the said 1962 Act and Section 186 of the Act of 1878 are in pari materia so on the basis of the analogy or reasonings under the said Act of 1878, it can be observed that the Customs Authorities are not Judicial Tribunals and the adjudging of confiscation, increased rate of duty or penalty would not constitute a judgment or order as mentioned hereinbefore, of a Court or Judicial Tribunal, for the purpose of invoking the rate of double jeopardy. Under the provisions of the 1878 Act or under the said Act the award of any confiscation, penalty or increased rate of duty by an officer of Customs does not prevent the infliction or any punishment to which the person charged is liable under any other law. Where the statute gives the right to proceed departmentally by imposine penalty and confiscation and also to file a complaint for criminal prosecution, both actions can be taken independently of one another and where the statute does not specifically provide as to which of the actions should be taken first in terms of the determinations in the case of Baldeo Raj Bhatia Vs. Superintendent of Central Excise and Land Customs and Another, , the concerned party cannot insist that any one action should be taken in preference to the other or earlier than the other.

29. Such and above being the considered view of different authorities and also that of mine the submissions on right of silence on the basis of the terms of Article 20(5) should fail. I am also of the view that in making any determination the manner way of treatment and dealings of the concerned person or persons will have to be judged, seen and looked into and the cases as cited by Mr. Majumdar would not be of any help and assistance in this case,

30. For the views as above. Civil Rule 1163 (w) of 1974 and so also the other Rules, which were heard and considered analogously, in the circumstances as indicated hereinbefore, should fail and they are thus discharged. There will be no order as to costs in all the Rules.