

The State of Punjab

Vs

Barkat Ram

Criminal Appeal No. 45 of 1959

(J.L. Kapur, K. Subha Rao, Raghuvar Dayal JJ)

30.08.1961

JUDGMENT

RAGHUBAR DAYAL, J. –

This appeal, by special leave, raise the question whether a Customs Officer, either under the Land Customs Act, 1924 (Act XIX of 1924) or under the Sea Customs Act, 1878 (Act VIII of 1878), is a police officer within the meaning of that expression in section 25 of the Indian Evidence Act.

Barkat Ram, respondent in this appeal, was the engine driver of 78 Down Train which reached Amritsar at about 4-15 P. M., on June 8, 1957. The train came from Pakistan. In consequence of information received with respect to the smuggling of gold by the engine crew, the Land Customs staff boarded the engine at Attari and other staff of the Department surrounded the engine on its arrival at Amritsar. The engine was searched and a quantity of gold was recovered, having been found lying concealed underneath the coal in the front part of the coal tender in the engine. The respondent was further interrogated at the Customs Station and, as a result of further search, another quantity of gold was recovered from the rear part of the coal tender. A document, Ex. P. E., dated June 5, 1957, was also recovered. This document was shown to the respondent on June 9, 1957, and the respondent inscribed on this document the note, Ex. P. D1 to the effect :

"... the letter is the same which Tawaqal Shah had given to me yesterday. The same to be delivered to Ghulam Mohd, who has come from Pakistan and has stayed at Grand Hotel. "

On June 9, 1957, Barkat Ram, the respondent, made certain other statement, Ex. P. K., to Manohar Singh Bedi, Inspector of Customs, stating therein :

"As usual on the 8th June, 1957, I took two bundles of Indian Currency from Ghulam Mohd, at Amritsar to Pakistan and when I brought 65 bars of gold from Tawakal Shah, from Pakistan, the Customs Officers recovered these 65 bars of gold from the engine at the Railway Station, Amritsar. I had kept concealed these 65 bars of gold in the engine in the presence of Shri Ram Murti and Shri Jagan Nath, my two Firemen, at the Loco Shed, Lahore. I was to deliver this gold to Ghulam Mohd. at Amritsar. "

A second statement was made to the same Customs Inspector on June 17, 1957, Ex. P. G. On this occasion too, he made a similar statement, adding that he was to get Rs. 200 against the delivery of gold.

On the complaint of the Assistant Collector of Land Customs, Amritsar, Barkat Ram was tried for offences punishable under section 23(1) of the Foreign Exchange Regulation Act, 1947, and under section 167(81) of the Sea Customs Act, 1878, as amended in 1955. He was convicted by the Magistrate. The conviction was confirmed by the appellate Court, but was set aside on revision by the High Court which held that Customs Officers were police officers within the meaning of that expression in section 25 of the Evidence Act, that confessional statements made to them were consequently inadmissible in evidence and that if they be excluded from consideration, there was no other evidence to sustain the conviction. It further held that section 27 of the Evidence Act did not apply to the facts of the case, as the recovery of gold was the result of search made by the Customs Officers and not the result of interrogating the respondent. The State of Punjab has filed this appeal against the acquittal order.

The only contention raised for the appellant in the appeal is that the Customs Officers to whom the confessional statements were made were not police officers within the meaning of that expression in section 25 of the Evidence Act. It was contended that the mere fact that powers to arrest certain persons, to make searches and to record evidence having a bearing on the alleged contravention of the legal provisions, are conferred on certain officers of the Customs Department, is not sufficient to make them 'police officers' contemplated by section 25 of the Evidence Act, even if it be assumed correct as held by certain High Courts, that officers on whom the powers of the Officer-in-charge of a Police Station under Chapter XIV of the Code of Criminal Procedure have been conferred, were police officers for the purpose of section 25 of the Evidence Act. The contention for the respondent is that officers on whom such powers are conferred are really police officers, though they are not so called and that the difference in nomenclature is of no effect in considering them police officers for the purposes of section 25. We are of opinion that the contention for the appellant is sound and that the Customs Officers are not police officers within the meaning of that term in section 25 of the Evidence Act.

We may mention, at this stage, that the Officers to whom the respondent made confessional statements, were Land Customs Officers appointed under the Land Customs Act. Section 9(1) of this Act reads :

"The provisions of the Sea Customs Act, 1878 (VIII of 1878), which are specified in the Schedule, together with all notifications, orders, rules or forms issued, made or prescribed, thereunder, shall, so far as they are applicable, apply for the purpose of the levy of duties of land customs under this Act in like manner as they apply for the purpose of the levy of duties of customs on goods imported or exported by sea. "

Among the sections of the Sea Customs Act made applicable by sub-section (1) of section 9 of the Land Customs Act, are included all the sections in Chapters XVI and XVII of the Sea Customs Act viz., sections 167 to 193. In view of these provisions, we have really to consider whether the Customs Officers under the Sea Customs Act, in view of the various powers conferred on them under the Sea Customs Act, are police officers contemplated by section 25 of the Evidence Act. If they are police officers, the Land Customs Officers appointed under the Land Customs Act will also be police officers in view of similar power being conferred on them.

Before we come to the interpretation of the expression 'police officer', we would like to express what we consider to be the duties and powers of a police officer and of customs officers.

The Police Act, 1861 (Act V of 1861), is described as an Act for the regulation of police, and is thus

an Act for the regulation of that group of officers who come within the word 'police' whatever meaning be given to that word. The preamble of the Act further says : 'whereas it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime, it is enacted as follows'. This indicates that the police is the instrument for the prevention and detection of crime which can be said to be the main object and purpose of having the police. Sections 23 and 25 lay down the duties of the police officers and section 20 deals with the authority they can exercise. They can exercise such authority as is provided for a police officer under the Police Act and any Act for regulating criminal procedure. The authority given to police officers must naturally be to enable them to discharge their duties efficiently. Of the various duties mentioned in section 23, the more important duties are to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances and to detect and bring offenders to justice and to apprehend all persons whom the police officer is legally authorised to apprehend. It is clear, therefore, in view of the nature of the duties imposed on the police officers, the nature of the authority conferred and the purpose of the police Act, 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.

Reference to section 9(1) of the Land Customs Act may be usefully made at this stage. It is according to the provisions of this sub-section that the provisions of the Sea Customs Act and the orders, rules etc., prescribed thereunder, apply for the purpose of levy of duties of land customs under the Land Customs Act in like manner as they apply for the purpose of levy of duties of customs on goods imported or exported by sea. This makes it clear that the provisions conferring various powers on the Sea Customs Officers are for the purpose of levying and realisation of duties of customs on goods and that those powers are conferred on the Land Customs officers also for the same purpose. Apart from such an expression in section 9(1) of the Land Customs Act, there are good reasons in support of the view that the powers conferred on the Customs Officers are different in character from those of the police officers for the detection and prevention of crime and that the powers conferred on them are merely for the purpose of ensuring that dutiable goods do not enter the country without payment of duty and that articles whose entry is prohibited are not brought in. It is with respect to the detecting and preventing of the smuggling of goods and preventing loss to the Central Revenues that Customs Officers have been given the power to search the property and person and to detain them and to summon persons to give evidence in an enquiry with respect to the smuggling of goods.

The preamble of the Sea Customs Act says : "Whereas it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties". Practically, all the provisions of the Act are enacted to achieve this object. Section 167 gives a long list of offences, but it is to be noticed that with the exception of certain offences, all the others are to be dealt with by the Customs Officers in view of section 182. The Customs Officers are given the power to confiscate, to fix the duty and to impose penalties which can, in certain cases, be of enormous amounts. The offences mentioned in section 167, which are to be dealt with by a Magistrate, are mostly of the type in which the Customs Officers have nothing to investigate. Offences at items Nos. 23 to 28 are with respect to certain acts committed by a pilot or a master of a vessel. The Customs staff has merely to report to conduct for trial before a Magistrate. They have nothing to investigate about it. Similarly the offence at item 72

relates to a person's making a false declaration. Offences at items Nos. 74, 75 and 76 are with respect to the conduct of the Customs Officers themselves. Items Nos. 76-A, 76-B and 78 deal with the obstruction by smugglers to the performance of duty by the Customs Officer. The offence at item No. 77 relates to an offence where a police officer neglects to do his duty. Item 81 creates an offence with respect to a person doing certain things to defraud the Government. The Customs Officer, therefore, is not primarily concerned with the detection and punishment of crime committed by a person, but is mainly interested in the detection and prevention of smuggling of good and safeguarding the recovery of customs duties. He is more concerned with the goods and customs duty, than with the offender.

Similar view was expressed by this Court in Maqbool Hussain's Case ([1953] S. C. R. 730). It was said at p. 741 :

"It is clear on a perusal of the above provisions that the powers of search, arrest and detention are given to the Customs Authorities for the levy of sea customs duties and provision is made at the same time for a reference to the Magistrate in all cases where search warrants are needed and detention of arrested person is required".

In Thomas Dana v. The State of Punjab ([1959] Supp. 1 S. C. R. 274, 289) it was said :

"There are as many as 81 entries in the Schedule to section 167, besides those added later, but each one of those 81 or more entries, though an offence, being an act infringing certain provisions of the sections and rules under the Act, is not a criminal offence..... They (i. e., Customs Officers) have been only given limited powers of search. Similarly, they have been given limited powers to summon persons to give evidence or to produce documents. "

Further it was observed at p. 291 :

"It is true that the petitioners were dealt with by the Collector of Central Excise and Land Customs, for the 'offence' of smuggling; were found 'guilty', and a deterrent 'punishment' was imposed upon them, but as he had not been vested with the powers of a Magistrate or a criminal court, his proceedings against the petitioners were in the nature of Revenue proceedings, with a view to detecting the infringement of the provisions of the Sea Customs Act, and imposing penalties when it was found that they had been guilty of those infringements. Those penalties, the Collector had been empowered to impose in order not only to prevent a recurrence of such infringements, but also to recoup the loss of such revenue resulting from such infringements. "

We are therefore of opinion that the duties of the Customs Officers are very much different from those of the police officers and that their possessing certain powers, which may have similarity with those of police officers, for the purpose of detecting the smuggling of goods and the persons responsible for it, would not make them police officers.

There seems to be no dispute that a person who is a member of the police force is a police officer. A person is a member of the police force when he holds his office under any of the Acts dealing with the police. A person may be a member of the police in any other country. Officers of the police in the erstwhile Indian States and an officer of the police of a foreign country have been held in certain

decided cases to be police officers within the meaning of section 25 of the Evidence Act. There is no denying that these persons are police officers and are covered by that expression in section 25. That expression is not restricted to the police officers of the police forces enrolled under the Police Act of 1861. The word 'police' is defined in section 1 and is said to include all persons who shall be enrolled under the Act. No doubt this definition is not restrictive, as it uses the expression 'includes', indicating thereby that persons other than those enrolled under that Act can also be covered by the word 'police'.

Sections 17 and 18 of the Police Act provide for the appointment of special police officers who are not enrolled under the Act but are appointed for special occasions and have the same powers, privileges and protection and are liable to perform the same duties as the ordinary officers of the police.

Section 21 also speaks of officers who are not enrolled as police officers and in such categories mentions hereditary or other village police officers.

The words 'police officer' are therefore not to be construed in a narrow way, but have to be construed in a wide and popular sense, as was remarked in *R. v. Hurribole* ((1876) I. L. R. Cal. 207) where a Deputy Commissioner of police who was actually a police officer and was merely invested with certain Magisterial powers was rightly held to be a police officer within the meaning of that expression in section 25 of the Evidence Act.

There has, however, arisen a divergence of opinion about officers on whom some powers analogous to those of police officers have been conferred being police officers for the purpose of section 25 of the Evidence Act. The view which favours their being held police officers, is based on their possessing powers which are usually possessed by the police and on the supposed intention of the legislature at the time of the enactment of section 25 of the Evidence Act to be that the expression 'police officer' should include every one who is engaged in the work of detecting and preventing crime. The other view is based on the plain meaning of the expression and on the consideration that the mere fact that an officer who, by no stretch of imagination is a police officer, does not become one merely because certain powers similar to the powers of a police officer are conferred on him.

We now refer to certain aspects which lead us to consider that the expression 'police officer' has not such a wide meaning as to include persons on whom certain police powers are conferred. The object of enacting section 25 of the Evidence Act, whose provisions formerly formed part of the Code of Criminal Procedure, was to exclude from evidence confessions made to the regular police which had a very bad reputation for the methods it employed in investigation, especially in forcibly extracting confessions with the object of securing a conviction. The past conduct of the members of the police organization justified the provision. It is too much to suppose that the Legislature did intend that all persons, who may have to investigate or arrest persons or seize articles in pursuance of any particular law of which at the time it has no conception, should be considered to be so unreliable that any confession made to them must be excluded just as a confession made to a regular police officer. If it could not contemplate the later creation of offences or of agencies to take action in respect to them under future legislation, it could not have intended the expression 'police officer' to include officers entrusted in future with the duty of detecting and preventing smuggling and similar offences with the object of safeguarding the levying and recovery of Customs duties. If the Legislature had intended to use the expression 'police officer' for such a wide purpose, it would have a more comprehensive expression. It could have expressed its intention more clearly by making any confession made to any officer whose duty is to detect and prevent the commission of offences

inadmissible in evidence.

The police officer referred to in section 25 of the Evidence Act, need not be the officer investigating into that particular offence of which a person is subsequently accused. A confession made to him need not have been made when he was actually discharging any police duty. Confession made to any member of the police, of whatever rank and at whatever time, is inadmissible in evidence in view of section 25.

Customs Officers can, even if the respondent's contention be accepted, be considered to be police officers only when they are exercising the limited powers which are similar to the powers of the police officers. This is clear from the observations in the cases relied upon on behalf of the respondent.

In *Ameen Sharif v. Emperor* ((1934) I. L. R. 61 Cal. 607) Mukerji, J., made the following observations in this connection, at p. 630 :

"As militating against the view which I am inclined to take as stated above, two points have been raised..... And the other is that in section 25 of the Act, in respect of an officer of the police, there is a personal disability implied irrespective of the question whether he is holding an investigation or not, while no such disability can be said to have been intended in the case of an excise officer..... And as regards the second point, I need only observe that, whereas police officers, by reason of section 22 of Act V of 1861, are always to be considered on duty for the purposes of the Act, all revenue officers, on the other hand, are not police officers and it is only such of them as may be exercising the powers of police officers and only when exercising such powers that they may be regarded as police officers. "

Similar views were expressed in *Ibrahim v. Emperor* (A. I. R. 1944 Lah. 57) and *Public Prosecutor v. Paramasivam* (A. I. R. 1953 Mad. 917). But, in our opinion, merely because similar powers in regard to detection of infractions of Customs laws have been conferred on Officers of the Customs Department as are conferred on Officers of the Police is not a sufficient ground for holding them to be police officers within the meaning of section 25 of the Evidence Act. The powers of search etc. conferred on the former are, as was observed in *Thomas Dana's Case* ([1959] Supp. S. C. R. 274, 289), of a limited character and have a limited object of safeguarding the revenues of the State.

It is also to be noticed that the Sea Customs Act itself refers to police officer in contradistinction to the Customs Officer. Section 180 empowers a police officer to seize articles liable to confiscation under the Act, on suspicion that they had been stolen. Section 184 provides that the officer adjudging confiscation shall take and hold possession of the thing confiscated and every officer of police, on request of such officer, shall assist him in taking and holding such possession. This leaves no room for doubt that a Customs Officer is not an officer of the Police.

Section 171-A of the Act empowers the Customs Officer to summon any person to give evidence or to produce a document or any other thing in any enquiry which he be making in connection with the smuggling of any goods.

It is well-settled that the Customs Officer, when they act under the Sea Customs Act to prevent the smuggling of goods by imposing confiscation and penalties, act judicially : *Leo Roy Frey v. The Superintendent, District Jail, Amritsar* ([1958] S. C. R. 822, 826); *Shewpujanrai Indrasanrai Ltd. v.*

The Collector of Customs ([1959] S. C. R. 821, 830). Any enquiry under section 171-A is deemed to be a judicial proceeding within the meaning of sections 193 and 228, India Penal Code, in view of its sub-section (4). It is under the authority given by this section that the Customs Officers can take evidence and record statements. If the statement which is recorded by a Customs Officer in the exercise of his powers under this Section be an admission of guilt, it will be too much to say that that statement is a confession to a police officer, as a police officer never acts judicially and in proceeding before a police officer is deemed, under any provision so far as we are aware, to be a judicial proceeding for the purpose of sections 193 and 228, Indian Penal code, or for any purpose. It is still less possible to imagine that the Legislature would contemplate such a person, whose proceedings are judicial for a certain purpose, to be a person whose record of statements made to him could be suspect if such statement be of a confessional nature.

It would be highly incongruous that most of the offences under section 167 be disposed of by the Customs Officers themselves and that such confessional statements recorded by Customs Officers be good material for them to take action and to penalize the offender to any amount of fine and yet the same statements be held to be not admissible in evidence if they have to be used at a trial for a criminal offence in a regular Court of law.

We therefore hold that the Customs Officers are not police officers for the purpose of section 25 of the Evidence Act.

We further hold that the conviction of the respondent for the offences under section 23(1) of the Foreign Exchange Regulation Act, 1947, and under section 167(81) of the Sea Customs Act, 1878, on the basis of his statements to the Customs Officers, was legal and was wrongly set aside by the High Court. We therefore allow the appeal, set aside the order of acquittal of the respondent for the aforesaid offences and restore the order of conviction passed by the Magistrate and confirmed by the Sessions Judge.

We make it clear, however, that we do not express any opinion on the question whether officers of departments other than the police, on whom the powers of an Officer-in-charge of a Police Station under ch. XIV of the Code of Criminal Procedure, have been conferred, are police officers or not for the purpose of section 25 of the Evidence Act, as the learned counsel for the appellant did not question the correctness of this view for the purpose of this appeal.

SUBBA RAO J. –

I regret my inability to agree. I cannot bring myself to hold that, while a confession made by an accused to a police officer is not admissible in evidence in a Court of law, the same if made, under exactly similar circumstances, to a customs officer can be relied and acted upon. The reasons for excluding the one from evidence would equally apply to the other.

Briefly stated, the case of the prosecution is as follows : On June 8, 1957, the Superintendent, Land Customs, Amritsar, received information that some gold would be smuggled from Pakistan to India by the engine crew of the train coming to Amritsar from Lahore that evening. On enquiry by the Customs officials, the engine crew stated that 100 tolas of gold was kept hidden underneath the cola in the tender of the engine. After recovering the said gold, Barkat Ram, the respondent, who was the driver of the engine, was arrested and taken to the Customs office for interrogation. On interrogation, it was disclosed that the gold was for delivery to one Ghulam Mohd. Two days later Ghulam Mohd. was also arrested at Amritsar. During the enquiry, Barkat Ram and Ghulam Mohd.

made statements before the Customs officials on different occasions admitting their guilt. In due course, the Assistant Collector, Land Customs, Amritsar filed a complaint against the said two persons before the Additional District Magistrate Amritsar, and the said Magistrate convicted and sentenced them under section 23 of the Foreign Exchange Regulation Act 1947 (Act No. 7 of 1947) and also under section 167(81) of the Sea Customs Act, 1878 (Act No. 8 of 1878). On appeal, the Additional Sessions Judge, Amritsar, confirmed the said order of conviction and sentence. Against the said order, the accused filed revisions to the High Court of Punjab. Apart from the confessions alleged to have been made by the accused, there was no other evidence to prove that they were guilty of the offence with which they were charged. It was contended before the High Court that the said confessional statements were hit by section 25 of the Evidence Act and, therefore, they were inadmissible in evidence. The High Court, accepting the contention, held that, if the statements were excluded, there was no other evidence to sustain the conviction. On that finding, the High Court set aside the conviction of the accused. The State has preferred the present appeal against the acquittal of Barkat Ram.

Learned counsel for the State contended that Customs officials are not police officers within the meaning of section 25 of the Evidence Act, and, therefore, the statements made by the respondents confessing their guilt were admissible in evidence and the convictions based thereon were sustainable.

Before considering the decisions cited at the Bar, let us look at the material provisions of the relevant Acts.

The Indian Evidence Act, 1872.

Section 25 No. confession made to a police officer shall be proved as against a person accused of any offence.

Code of Criminal Procedure, 1898.

Section 5. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

Police Act, 1861.

Section 1..... the word "police" shall include all persons who shall be enrolled under this Act.

Sea Customs Act, 1878.

Section 6. The Central Government may appoint such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers.

The question is whether a customs officer is a police officer within the meaning of section 25 of the Evidence Act. The Evidence Act does not define the term "police officer". The Sea Customs Act does not designate any officers appointed thereunder as police officers. The Police Act of 1861 gives an inclusive definition of the word "police" and therefore, it is not exhaustive; and "it comprehends not only such things as it signifies according to its natural import, but also enlarges the meaning of the said word so as to take in other things." Section 5(2) of the Code of Criminal Procedure also contemplates investigation of, or inquiry into, offences under other enactments regulating the manner or place of investigation, that is, if an act creates an offence and regulates the manner and place of investigation or inquiry in regard to the said offence, the procedure prescribed by the Code of Criminal Procedure will give place to that provided in that Act. If the said Act entrusts investigation to an officer other than one designated as police officer, he will have to make the investigation and not the police officer. In this situation, the mere use of the words "police officer" in section 25 of the Evidence Act does not solve the problem, having regard to permissible rules of interpretation of the term "police officer" in that section. It may mean any one of the following categories of officers : (i) a police officer who is a member of the police force constituted under the Police Act; (ii) though not a member of the police force constituted under the Police Act, an officer who by statutory fiction is deemed to be a police officer in charge of a police station under the Code of Criminal Procedure; and (iii) an officer on whom a statute confers powers and imposes duties of a police officer under the Code of Criminal Procedure, without describing him as a police officer or equating him by fiction to such an officer. Now, which meaning is to be attributed to the term "police officer" in a section 25 of the Evidence Act ? In the absence of a definition in the Evidence Act it is permissible to travel beyond the four corners of the statute to ascertain the legislative intention. What was the meaning which the legislature intended it give to the term "police officer" at the time the said section was enacted ? That section was taken out of the Criminal Procedure Code, 1861 (Act 25 of 1861) and inserted in the Evidence Act of 1872 as section 25. Stephen in his Introduction to the Evidence Act states at p. 171 thus :

"I may observe, upon the provisions relating to them, that sections 25, 26 and 27 were transferred to the Evidence Act verbatim from the Code of Criminal Procedure, Act XXV of 1861. They differ widely from the law of England, and were inserted in the Act of 1861 in order to prevent the practice of torture by the police for the purpose of extracting confessions from persons in their custody. "

So too, Mahmood, J., in *Queen Empress v. Babulal* (1884) I. L. R. 6 All. 509) gave the following reasons for the enactment of section 25 of the Evidence Act at p. 523.

"..... the legislature had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and that those malpractices went to the length of positive torture; nor do I doubt that the Legislature, in laying down such stringent rules, regarded the evidence of police officers as untrustworthy, and the object of the rules was to put a stop to the extortion of confessions, by taking away from the police officers as the advantage of proving such extorted confessions during the trial of accused persons. "

It is, therefore, clear that section 25 of the Evidence Act was enacted to subserve a high purpose and that is to prevent the police from obtaining confessions by force, torture or inducement. The salutary principle underlying the section would apply equally to other officers, by whatever designation they may be known, who have the power and duty to detect and investigate into crimes and is for that purpose in a position to extract confessions from the accused.

In the Oxford Dictionary, the word "police" is defined thus :

"The department of government which is concerned with the maintenance of public order and safety, and the enforcement of the law; the extent of its functions varying greatly in different countries and at different periods.

The civil force to which is entrusted the duty of maintaining public order, enforcing regulations for the prevention and punishment of breaches of the law, and detecting crime; construed as plural, the members of a police force; the constabulary of a locality. "

Shortly stated, the main duties of the police are the prevention and detection of crimes. A police officer appointed under the Police Act of 1861 has such powers and duties under the Code of Criminal Procedure, but they are not confined only to such police officers. As the State's power and duties increased manifold, acts which were at one time considered to be innocuous and even praiseworthy have become offences, and the police power of the State gradually began to operate on different subjects. Various Acts dealing with Customs, Excise, Prohibition, Forest, Taxes etc., came to be passed, and the prevention, detection and investigation of offences created by those Acts came to be entrusted to officers with nomenclatures appropriate to the subject with reference to which they functioned. It is not the garb under which they function that matters, but the nature of the power they exercise or the character of the function they perform is decisive. The question, therefore, in each case is, does the officer under a particular Act exercise the powers and discharge the duties of prevention and detection of crime ? If he does, he will be a police officer.

There is a conflict of judicial opinion on the question raised. The earliest decision, which was followed by other later decisions, is that of the Calcutta High Court in *The Queen v. Hurribole Chunder Ghose* ((1876) I. L. R. 1 Cal. 207). The decision in that case was given in 1876. It indicates in a way how the courts understood the term "police officer" in or about the time when section 25 was inserted in the Evidence Act. There, the question was whether a Deputy Commissioner of Police before whom a prisoner made a statement was a police officer within the meaning of section 25 of the Evidence Act. It was argued that the term "police officer" comprised only that class of persons who are called under the Bengal Police Act the members of the police force. Answering that question, the learned Chief Justice observed at p. 215 thus :

"..... in construing the 25th section of the Evidence Act of 1872, I consider that the term "police officer" should be read not in any technical sense, but according to its more comprehensive and popular meaning, In common parlance and amongst the generality of people, the Commissioner and Deputy Commissioner of Police are understood to be officers of Police, or in other words "police officers", quite as much as the more ordinary members of the force..... "

It is true that in that case the court was concerned with the question whether the Deputy Commissioner of Police was a police officer. But that decision laid down that to be police officer within the meaning of section 25 of the Evidence Act one need not be a member of the police force under the Act of 1861. This decision stood the test of time and indeed it represented the contemporaneous judicial opinion of the time. In 1926 a full bench of the Bombay High Court in *Nanoo v. Emperor* ((1927) I. L. R. 51 Bom. 78) held that a Abkari Officer under the Bombay Abkari Act, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act exercised the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in

charge of a police station for the investigation of a cognizable offence, was a police officer within the meaning of section 25 of the Indian Evidence Act. Marten C. J., after considering the relevant provisions and the case law on the subject came to the following conclusion, at p. 94 :

"After giving then my best attention to the arguments, which have been addressed to us, in my judgment, we should hold that as the Bombay Legislature has deliberately conferred upon these Abkari officers substantially all the powers of a Police officer, they have thereby in effect made them Police officers within the meaning of section 25. "

Shah, J., stated much to the same effect at p. 97 :

"It seems to me a perfectly fair interpretation of section 25 to say that the Police officer within the meaning of that section is an officer, who exercises the powers of police conferred upon him by law, whether he is called a Police officer or he is called by any other name and exercises other function also under other provisions of law. He is a Police officer within the meaning of section 25, if in the investigation of offences under particular Act he exercises the powers of an officer in charge of a police station for the investigation of a cognizable offence conferred upon him by that Act. "

This decision, therefore, accepted the principle that nomenclature given to a particular officer was not decisive of the question whether he was a police officer, but the powers conferred upon him afforded the criterion. It is true that section 41 of the Bombay Abkari Act stated,

"Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police-station for the investigation of a cognizable offence. "

But conferment of power on an officer by reference to another Act in only one of the legislative devices and such conferment also could be made by specific provisions in an Act without reference to another Act. A full Bench of the Calcutta High Court in *Ameen Sharif v. Emperor* ((1934) I. L. R. 61 Cal. 607) adopted the same test for deciding whether an officer was a police officer or not. That decision related to an excise officer, and the Bengal Excise Act conferred powers on the excise officers similar to those conferred by section 41 of the Bombay Abkari Act on the Abkari Officers. Mukerji J., who delivered the leading judgment, after scrutinizing the relevant provisions and the cases concluded his discussion thus at p. 629 :

"It is the nature of the duties performance of which was likely to give occasion for improper influences being exercised or felt, and not any particular aversion for a particular department of public service that must have moved the legislature in enacting the provision. I am, therefore, of opinion that if matters which previously did not fall within the category of crime subsequently came to be recognized as such and on that officers have been appointed to discharge or have been vested with powers of discharging duties which a police officer had to discharge in 1872, then whatever may be the name of the department to which such officers may have been attached, such officers must be regarded as coming within the term "police officer", with regard to whom section 25 of the Evidence Act was intended to be applied. "

This passage neatly summarises the law on the subject, and I entirely agree with it. Ghose, J., in a separate judgment came to the same conclusion and he stated at p. 654 thus :

"Since 1872, not only have new offences been created by later Acts, but new bodies of officers have been created who are vested with powers of police with regard to these offences. "

Then the learned Judge posed the question, "Would that make any difference to the application of the section to these officers ?" and answer it thus at p. 656 :

"The words "police officer" may be plain, but they are not defined in the Evidence Act. The contention that the term applies only to members of the police force is not borne out by authority. On the other hand, it is quite consistent with the scheme of the Act that a person, who exercises the powers of a police officer, should be hit by the prohibitive provision of section 25."

Turning to Madras decisions, it would be enough if only one decision of the Madras High Court is noticed, for the other decisions were made by single Judges and were also considered in the said decision. A division bench of the Madras High Court in *Public Prosecutor v. Paramasivam* (A. I. R. 1953 Mad. 917) was considering the status of an excise officer under the Opium Act. The learned Judges held that an excise officer invested with the powers of an officer in charge of a police station for investigation of offences under section 20A of the Opium Act was a "police officer" coming within the purview of section 25 of the Evidence Act. Balakrishna Ayyar, J., made the following observations at p. 918 :

"There is no exhaustive definition of the expression 'Police Officer' in any of our statutes..... In the absence of statutory definition, and, apart from all authority, one would be tempted to say that a police officer is a person whom any statute or other provision of law calls such or, on whom it confers all or substantially all the powers and imposes the duties of a police officer. If he is expressly called a police officer there is no difficulty whatsoever. If he is not so called then the next step is to ask : what does the law require him to do ? What are the duties imposed on him ? and what are the powers conferred on him ? If these are substantially those of a police officer there need be no qualms in regarding him as one. If his powers and duties are confined to a particular extent of territory or to a particular subject matter he will be a police officer only in respect of that territory or that subject-matter. The material thing to consider would be not the name given to him, nor the colour of the uniform he is required to wear, but his functions, powers and duties. A police officer does not cease to be such merely because he is put into a white khadder uniform instead of one in khaki drill; a medicine will be just the same whether it is packaged in a glass jar or a plastic container. "

This passage, in my view, lays down with clarity the real test for determining whether a particular officer is a police officer or not within the meaning of a statute. I am in full accord with the said statement.

A full bench of the Patna High Court in *Radha Kishun Marwari v. King Emperor* ((1932) I. L. R. 12 Pat. 46) struck a different note. That Court swung to the other extreme and held that "the distinction between a person who is nothing but a Police Officer and one who is primarily not a Police Officer

but merely invested with the powers of a Police Officer is material and cannot be ignored for the purpose of construing section 25 of the Evidence Act. " On the basis of the said principle, it came to the conclusion that an Excise Officer was not a "Police Officer" within the meaning of section 25 of the Evidence Act. With great respect to the learned Judges, who decided that case, I think that "they looked too narrowly at the appearance of things and declined to look at the substance behind the appearance". If that interpretation be correct, an officer, who is simply designated as a police officer, will come under the mischief of section 25 of the Evidence Act, whereas an officer, who is not described as a police officer but who is entrusted with all the police powers and duties would not be hit by it. This adherence to the letter in derogation of the spirit of a statute would defeat the object of the statute itself. I, therefore, cannot accept this judgment as correct.

It is not necessary to multiply decisions discussing the general principles. But I would notice a few decisions relating to Customs Officer. Yahya Ali, J., in *In re Mayalavahanam* (I. L. R. [1947] Mad. 788) expressed the view that an Assistant Inspector of Customs was not a police officer within the meaning of section 25 of the Evidence Act. In coming to that conclusion, the learned Judge distinguished a decision of a division bench of the Madras High Court on the ground that the Ordinance on which that decision turned specifically mentioned that in conducting the investigation particular officers would have all the powers, duties, privileges and liabilities of an officer in charge of a police station under the Criminal Procedure Code. I do not see how that circumstance makes a difference in the application of section 25 of the Evidence Act. The fact that the Ordinance, by reference to the code of Criminal Procedure, conferred powers on the Commercial Tax Officers, but the Sea Customs Act conferred similar powers not by reference to any Code, but by express enactment, could not make any difference in the application of the principle. I shall consider at a later stage the scope of the powers conferred by the Sea Customs Act on a Customs Officer in the matter of prevention, detection and investigation of crimes.

The Punjab High Court, on the other hand, in *Gopal Dass v. The State* (A. I. R. 1959 Punjab 113) held that a Customs Officer under the Sea Customs Act had powers analogous to police powers relating to prevention or detection of crimes and, therefore, he was a police officer within the meaning of section 25 of the Evidence Act. The Calcutta High Court in *Fernandez v. State* (A. I. R. 1953 Cal. 219) held that a Customs Officer was a police officer within the meaning of section 25 of the Evidence Act, whereas the Mysore High Court in *Issa Yacub v. State of Mysore* (A. I. R. 1961 Mysore 7) took a contrary view. The conflicting views were mainly based upon the alleged circumstance that under the Sea Customs Act, though powers of prevention and detection were conferred on a Customs Officer, no powers of investigation was given to him. I shall consider this aspect at a later stage.

The foregoing consideration of the case law and the statutory provisions yields the following results : The terms "police officer" is not defined in the Evidence Act, or, as a matter of fact, in any other contemporaneous or subsequent enactment. The question, therefore, falls to be decided on a fair construction of the provisions of section 25 of the Evidence Act, having regard to the history of the legislation and the meaning attributed to that term in and about the time when section 25 of the Evidence Act came to be inserted therein. If a literal meaning is given to the term "police officer" indicating thereby an officer designated as police officer, it will lead to anomalous result. An officer designated as a police officer, even though he does not discharge the well understood police functions, will be hit by section 25 of the Evidence Act, whereas an officer not so designated but who has all the powers of a police officer would not be hit by that section; with the result, the object of the section would be defeated. The intermediate position, namely, that an officer can be a police officer only if powers and duties pertaining to an officer in charge of a police station within the

meaning of the Code of Criminal Procedure are entrusted to him, would also lead to an equally anomalous position, for, it would exclude from its operation a case of an officer on whom specific powers and functions are conferred under specific statutes without reference to the code of Criminal Procedure. The Code of Criminal Procedure does not define a "police officer" and is 5(2) thereof makes the procedure prescribed by the Code subject to the procedure that may be prescribed by any specific Act. This construction would make the provisions of section 25 of the Evidence Act otiose in respect of officers on whom specific and incontrovertible police powers are conferred. But the third position would not only carry out the intention of the Legislature, but would also make the section purposive and useful without doing any violence to the language of the section. A police officer within the meaning of section 25 of the Evidence Act may be defined thus : An officer, by whatever designation he is called, on whom a statute substantially confers the powers and imposes the duties of the police is a police officer within the meaning of section 25 of the Evidence Act.

With this background let us scrutinize the provisions of the Sea Customs Act to ascertain whether such powers have been conferred and duties imposed on a Customs officer. Section 167 of the Sea Customs Act opens out with the following words : "The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively ." Chapter XVI of the Act deals with offences and penalties. Section 167 provides penalties for offences in a tabular form. The first column gives the particulars of offences, the second column gives the section to which the offence has reference and the third column gives the penalties in respect of each offence. Apart from the facts that the statute itself, in clear terms, describes the acts detailed in the first column of section 167 as offences against particular laws, the acts described therein clearly fall within the definition of "offences" in the General Clauses Act and the India Penal Code. Therefore, any contravention of any of the provisions of the Act mentioned in section 167 of the Sea Customs Act is an offence. Chapter XVII prescribes the procedure relating to offences, appeals, etc. Section 169 confers on an officer of Customs, duly employed in the prevention of smuggling, the power to search on reasonable suspicion any person on board of any vessel in any port in India or within the Indian customs waters or any person who has landed from any vessel. Section 170A enables the said Customs officer, for detecting secreted goods to have the body of a person suspected of smuggling X-rayed after obtaining the order of a Magistrate. Section 171 empowers such officer to board a vessel for searching it an order to ascertain whether any breach of the Act or any other law relating to customs has been or is being or is likely to be committed. Section 171A, which was inserted by Act 21 of 1955, gives power to the said officer to summon persons to give evidence and produce documents, presumably to facilitate investigation of the offence. Under section 173 an officer of Customs may arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Sea Customs Act. Under section 178, anything liable to confiscation under the Act may be seized in any place by a Customs officer. The said sections, therefore, create offences, and, for the purpose of prevention and detection of such offences, confer specific powers on the Customs officers to search persons or places, to arrest persons suspected of such offences and to make necessary investigation in respect thereof. The Customs officers under the Act have the powers, and they also discharge the functions, of police officers and, therefore, they are police officers for the purpose of the Evidence Act in so far as they exercise or discharge such powers and functions. I, therefore, hold that a Customs officer is a police officer qua his police functions. If so, it follows that a confession made to him cannot be proved against a person accused of an offence.

In the present case, it is not disputed that if the confession made by the respondent to the Customs officers was excluded, there would be no other evidence on which the conviction could be sustained. Therefore, the order of the High Court is correct.

In the result, the appeal fails and is dismissed.

BY COURT : In accordance with the opinion of the majority, the appeal is allowed.

Appeal allowed.

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