

Raja Ram Jaiswal

Vs

State of Bihar

Criminal Appeal No. 125 of 1961

(Raghuvar Dayal, J. R. Mudholkar, K. Subha Rao JJ)

04.04.1963

JUDGMENT

MUDHOLKAR J. –

In this appeal by special leave from the judgment of the Patna High Court affirming the conviction of the appellant under s. 47(a) of the Excise Act and the sentences of rigorous imprisonment for one year and of fine amounting to Rs. 2,000 awarded by the Judicial Magistrate, First Class, Patna, the substantial question which falls for decision is whether a confession made by the appellant and recorded by the Excise Inspector who was investigating the case is inadmissible by reason of the provisions of s. 25 of the Indian Evidence Act, 1872.

It is not disputed before us by Mr. Chari that on August 3, 1957, a motor car bearing No. WBC 562 was stopped by the Excise Inspector, R. R. P. Sinha (P.W. 1) on the Bayley Road, near the New Secretariat, Patna, at 10.00 p.m. The car belongs to the appellant's brother Radhey Shyam; but he was not at that moment in the car. The car was then being driven by Jagdish Sah and the appellant was sitting by his side. Four other persons were sitting on the back seat. The Excise Inspector searched the car in the presence of three witnesses Debendra Prasad Singh (P.W. 2), Paresh Nath Prasad Singh (P.W. 3) and Rabindra Prasad Singh (P.W. 4) and recovered from the car five bundles of non-duty paid Nepali Ganja. According to the prosecution four of them were recovered from the luggage boot of the car while one was recovered from the leg space in front of the front seat of the car. According to the appellant, however, no ganja was carried in the car and, therefore, none was seized from the car. Further, according to the prosecution, the appellant produced the keys with which the luggage boot was opened. The Excise Inspector made a seizure memo Ex. 2 and recorded the statements of all the persons who were in the car, including the appellant. Exhibit 3 is the statement of the appellant.

After the investigation was completed all the persons who were in the car at that time including the appellant and Radhey Shyam, the brother of the appellant, were put up for trial before the Judicial Magistrate. He convicted all of them but in appeal the Sessions Judge, Patna, acquitted all except the appellant. It is, therefore, not necessary to refer to the defence taken by the acquitted persons. The appellant's defence was that he was not travelling in the car at the relevant moment and that he was at that time in the house of Kanhai Singh (D.W. 1) which is situate in Subjibagh Mohalla of Patna where he was arrested by the Excise Inspector at 6.00 on the morning of August 4. His defence further is that after his arrest R. R. P. Sinha, P.W. 1 and other officers of the Excise Department took him in a jeep, subjected him to threats and abuses, assaulted him and eventually took his signature on a blank paper. Thus his defence is that he was falsely implicated by the Excise Inspector. In view, however, of the fact that all the courts have accepted the evidence of the prosecution witnesses

which establishes the fact that the appellant was actually in the car when it was stopped by the Excise Inspector, Mr. Chari has rightly not challenged that finding. He has also not contended that the appellant's signature was taken on a blank paper by the Excise Officers. The argument he advanced, however, is that there is no legally admissible evidence on the basis of which the appellant's conviction can be sustained. The confessional statement Ex. 3 upon which reliance has been placed by the High Court as supporting the evidence of P.W. 2 Debendra Prasad Singh, P.W. 3 Paresh Nath Prasad Singh and P.W. 4 Rabindra Prasad Singh is attacked as being inadmissible in evidence and it is said that if this statement is put aside the evidence of the three prosecution witnesses on whom reliance has been placed by the High Court is insufficient in law to sustain the conviction of the appellant under s. 47(a) of the Excise Act.

The relevant portion of s. 47 runs thus :

"Penalty for unlawful import, export, transport, manufacture, possession, sale, etc. -

If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or license, permit or pass granted, under this Act, -

(a) imports, exports, transports, manufactures, possesses or sells any intoxicant; or...
... .. he shall be liable to imprisonment for a term which may extend to one year or to fine which may extend to two thousand rupees, or to both."

The evidence of P.Ws. 2, 3 and 4 taken along with the evidence of the Excise Inspector establishes the following facts :

- (1) that the appellant was sitting by the side of the driver when the car was stopped by the Excise Inspector;
- (2) that five bundles of non-duty paid Nepali Ganja were recovered from the car;
- (3) that four bundles were recovered from the luggage boot of the car and one from the leg space in front of the front seat;
- (4) that a bunch of keys marked Ex. 2 series was recovered from the pocket of the appellant and another bunch of keys marked Ex. 1 series was recovered from the possession of the driver Jagdish Sah;
- (5) that every key of Ex. 1 series could open the lock of the luggage boot and two keys of Ex. 2 series could also open the lock.

In order to establish this, the prosecution has relied on the seizure memo Ex. F and the evidence of the Excise Inspector and P.W. 2 Debendra Prasad Singh. P.W. 3 Paresh Nath Prasad Singh and P.W. 4 Rabindra Prasad Singh. A perusal of Ex. F would, however, show that material alterations and erasures appear to have been made in that document by reason of which no reliance can be placed upon it. The High Court has wholly ignored this fact and we are, therefore, entitled to take it into consideration. It would appear that originally it was shown in col. 5 and 6 taken together that a bundle containing 35 seers of ganja was found in the leg space in front of the rear seat but what was written originally in col. 6 has been over-written by inserting words describing meaningless facts on top of the words originally written and in continuation of them. In Col. 5 the weight of the bundle is given as 35 seers and below it weights of four other bundles are mentioned. They are 35 seers, 26

seers, 18 seers and 6 seers. The weight of the first bundle was excluded from the bracket in which the weights of the first three bundles were included. Then by introducing another bracket, the first bundle was included within it. Against the bracket it is stated in col. 6 that the bundles were found in the luggage boot. The bundle weighing 6 seers is not included in the bracket. Against it, there was some other remark in col. 6 which has been clumsily erased and in its place it is stand "In the leg space in front of front seat." Again, in col. 8 wherever the appellant's name appears there appears to have been something else originally which was erased and his name written there subsequently. A bare look at the document shows that it has been materially altered and is, therefore, not a kind of material on which reliance can be placed. It is only with the aid of the confession that it can be accepted as incriminating the appellant. For, even the direct evidence of witnesses was not regarded by the High Court as worthy of credence, unaided by the confession.

It is indeed the prosecution case that one bundle of ganja was found in the leg space in front of the front seat. Bearing in mind the fact that there were six persons in the car at the time and that the luggage boot in which the bundles were kept could be opened not merely with the keys which were recovered from the appellant but also with the keys which were recovered from the driver it is not possible to say, though the driver has been acquitted, that the appellant was in exclusive possession of the ganja which was found in the car except with the aid of the confessional statement, Ex. 3. It follows, therefore, that the appellant's conviction could be maintained only if, we hold that the confessional statement is admissible in evidence.

Mr. Chari besides objecting to the admissibility of the confessional statement relying on s. 25 of the Evidence Act also contends that that statement is rendered inadmissible by the provisions of s. 162, Code of Criminal Procedure inasmuch as it was recorded by R. R. P. Sinha, Inspector of Excise while he was investigating into an excise offence under Ch. XIV of the Code of Criminal Procedure.

Section 25 of the Evidence Act reads thus :

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

Undoubtedly the Inspector R. R. P. Sinha is an Excise Officer and not a police officer in the sense that he does not belong to the police force or the police the police establishment. It has, however, been held in a large number of cases, including the one decided by this court, *The State of Punjab v. Barkat Ram* [[1962] 3 S.C.R. 338], that the words "Police Officer" to be found in s. 25 of the Evidence Act are not to be construed in a narrow way but have to be construed in a wide and popular sense. Those words, according to this Court, are however not to be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred. This Court was there concerned with the question whether a Customs Officer can be regarded as a Police Officer and consequently whether a confession made to such an officer is hit by the provisions of s. 25 of the Evidence Act. In the majority judgment Raghubar Dayal J., has observed :

"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 smuggling of goods and safeguarding the recovery of customs duties. He is more concerned with the goods and customs duty, than with offender." (p. 279).

After pointing out that Customs Officers, when they act under the Sea Customs Act for the prevention of smuggling of goods, also act judicially inasmuch as they are entitled to confiscate the

goods and levy penalties on the person found smuggling, he said that the mere fact that 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 sufficient for holding them to be police officers within the meaning of s. 25 of the Evidence Act because the powers of search etc., conferred on the former are of a limited character and have a limited object of safeguarding the revenues of the State. The majority, however expressed no 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. 14 of the Code of Criminal Procedure are conferred are police officers or not for the purpose of s. 25 of the Evidence Act. The question whether an Excise Officer is a Police Officer was thus left open by them.

It is precisely this question which falls for consideration in the present appeal. For, under s. 78(3) of the Bihar and Orissa Excise Act, 1915 (2 of 1915) an Excise Officer empowered under s. 77 sub-s. (2) of that Act shall, for the purpose of s. 156 of the Code of Criminal Procedure be deemed to be an officer in charge of a police station with respect to the area to which his appointment as an Excise Officer extends. Sub-section (1) of s. 77 empowers the Collector of Excise to investigate without the order of a Magistrate any offence punishable under the Excise Act committed within the limits of his jurisdiction. Sub-section (2) of that section provides that any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under the Excise Act may, without the order of a Magistrate, investigate any such offence which a court having jurisdiction within the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions. By virtue of these provisions the Lieutenant Governor of Bihar and Orissa by Notification No. 470-F dated January 15, 1919 has specially empowered Inspectors of Excise and Sub-Inspectors of Excise to investigate any offence punishable under the Act. It is not disputed before us that this notification is still in force. By virtue of the provisions of s. 92 of the Act it shall have effect as if enacted in Act. It would thus follow that an Excise Inspector or Sub-Inspector in the State of Bihar shall be deemed to be an officer in charge of a police station with respect to the area to which he is appointed and is in that capacity entitled to investigate any offence under the Excise Act within that area without the order of a Magistrate. Thus he can exercise all the powers which an officer in charge of a police station can exercise under Ch. XIV of the Code of Criminal Procedure. He can investigate into offences, record statements of the persons questioned by him, make searches, seize any articles connected with an offence under the Excise Act, arrest an accused person, grant him bail, send him up for trial before a Magistrate, file a charge sheet and so on. Thus his position in so far as offences under the Excise Act committed within the area to which his appointment extends are concerned is no different from that of an officer in charge of a police station. As regards these offences not only is he charged with the duty of preventing their commission but also with their detection and is for these purposes empowered to act in all respects as an officer in charge of a police station. No doubt unlike an officer in charge of a police station he is not charged with the duty of the maintenance of law and order nor can he exercise the powers of such officer with respect to offences under the general law or under any other special laws. But all the same, in so far as offences under the Excise Act are concerned, there is no distinction whatsoever in the nature of the powers he exercises and those which a police officer exercises in relation to offences which it is his duty to prevent and bring to light. It would be logical, therefore, to hold that a confession recorded by him during an investigation into an excise offence cannot reasonably be regarded as anything different from a confession to a police officer. For, in conducting the investigation he exercises the powers of a police officer and the act, itself deems him to be a police officer, even though he does not belong to the police force constituted under the Police Act. It has been held by this court that the expression

"Police Officer" in s. 25 of the Evidence Act is not confined to persons who are members of the regularly constituted police force. The position of an Excise Officer empowered under s. 77(2) of the Bihar and Orissa Excise Act is not analogous to that of a Customs Officer for two reasons. One is that the Excise Officer does not exercise any judicial powers just as the Customs Officer does under the Sea Customs Act, 1878. Secondly, the Customs Officer is not deemed to be an officer in charge of a police station and therefore can exercise no powers under the Code of Criminal Procedure and certainly not those of an officer in charge of a police station. No doubt, he too has the power to make a search, to seize articles suspected to have been smuggled and arrest persons suspected of having committed an offence under the Sea Customs Act. But that is all. Though he can make an enquiry, he has no power to investigate into an offence under s. 156 of the Code of Criminal Procedure. Whatever powers he exercises are expressly set out in the Sea Customs Act. Though some of those set out in ch. XVII may be analogous to those of a Police Officer under the Code of Criminal Procedure they are not identical with those of a police officer and are not derived from or by reference to the Code. In regard to certain matters, he does not possess powers even analogous to those of a Police Officer. Thus he is not entitled to submit a report to a Magistrate under s. 190 of the Code of Criminal Procedure with a view that cognizance of the offence be taken by the Magistrate. Section 187(A) of the Sea Customs Act specially provides that cognizance of an offence under the Sea Customs Act can be taken only upon a complaint in writing made by the Customs Officer or other officer of the customs not below the rank of an Assistant Collector of Customs authorised in this behalf by the Chief Customs Officer.

It may well be that a statute confers powers and imposed duties on a public servant, some of which are analogous to those of a police officer. But by reason of the nature of other duties which he is required to perform he may be exercising various other powers also. It is argued on behalf of the State that where such is the case the mere conferral of some only of the powers of a police officer on such person would not make him a police officer and, therefore, what must be borne in mind is the sum total of the powers which he enjoys by virtue of his office as also the dominant purpose for which he is appointed. The contention thus is that when an officer has to perform a wide range of duties and exercise correspondingly a wide range of powers, the mere fact that some of the powers which the statute confers upon him are analogous to or even identical with those of a police officer would not make him a police officer and, therefore, if such an officer records a confession it would not be hit by s. 25 of the Evidence Act. In our Judgment what is pertinent to bear in mind for the purpose of determining as to who can be regarded a "police officer" for the purpose of this provision is not the totality of the powers which an officer enjoys but the kind of powers which the law enables him to exercise. The test for determining whether such a person is a "police officer" for the purpose of s. 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of a police station establish a direct or substantial relationship with the prohibition enacted by s. 25, that is, the recording of a confession. In our words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or a delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question may as to what other powers he enjoys. These questions may perhaps be relevant for consideration where the powers of a police officer conferred upon him are of a very limited character and are not by themselves sufficient to facilitate the obtaining by him of a confession.

As an instance of a law which confers on an officer powers of a limited character which are analogous to those conferred upon police officers, we may refer to the Sea Customs Act itself. This Act confers a wide range of powers on Customs Officers. But powers analogous to those of a police

officer are to be found only in ch. XVII which deals with "procedure relating to offences, appeals etc." Under s. 169 a Customs officer is empowered to search on reasonable suspicion any vessel in any port in India or any person who has landed from any vessel. This power, however, is subject to the right given by s. 170 to that person to require the Customs officer to take him before his search to a Magistrate or Customs Collector. Where such person exercises that the right the question as to whether he should be searched or not would depend upon the Magistrate or the Customs Collector being satisfied about the existence of reasonable grounds for the search. No such restriction is imposed upon a police officer making a search under s. 102, sub-s. (3) of the Code. Again, whereas an officer in charge of a police station can search any place in connection with a cognizable offence under investigation after recording in writing his reasons, a Customs Officer cannot search any place on land where a dutiable or prohibited goods or documents relating to such goods are secreted without first obtaining a search warrant from a Magistrate. Under s. 173 of the Act a Customs Officer has the power to arrest a person against whom reasonable suspicion exists that he has been guilty of an offence under the Act. But he is required to produce that person forthwith before the nearest Magistrate and it will be for the Magistrate either to commit that person to jail custody or release him on bail at his discretion. An officer in charge of a police station has, however, the power, to release an arrested person on his furnishing bail and is not required for the purpose to obtain an order of a Magistrate. It is only where he does not release him on bail that he must produce him before a Magistrate within 24 hours of arrest. We may add that the existence of the power to grant bail in an officer in charge of a police station itself enables him to exercise authority over the arrested person and influence his conduct if he so wishes. Finally, a Customs Officer has power to seize anything liable to confiscation under the Act. But where he has seized anything he is liable on demand of the person in charge of the thing so seized, to give him a statement in writing of the reasons for such seizure. Similarly where he has arrested a person, he is bound to give to that person, if that person so demands, a statement in writing disclosing the reasons for the arrest. No such duty is cast upon a police officer seizing an article or arresting a person. Chapter XVII deals with no other powers which could be said to be analogous to those of a police officer. The whole of that chapter shows that the other powers conferred upon a Customs Officer are such, as are necessary for preventing the commission of offences under the Sea Customs Act and matters incidental thereto. It is worthy of note that the powers of investigation into offences which a police officer enjoys are not conferred upon a Customs Officer. It is the possession of these powers which enables police officers and those who are deemed to be police officers to exercise a kind of authority over the persons arrested which facilitate the obtaining from them statements which may be incriminating to the persons making them. The law allows the police officer to obtain such statements with a view to facilitate the investigation of the offences. But it renders them inadmissible in evidence for the obvious reason that a suspicion about voluntariness would attach to them. It is the power of investigation which establishes a direct relationship with the prohibition enacted in s. 25. Therefore, where such a power is conferred upon an officer, the mere fact that he possesses some other powers under another law would not make him any the less a police officer for the purposes of s. 25.

In this connection it would be pertinent to bear in mind the object with which the provisions of s. 225 of the Evidence Act were enacted. For this purpose we can do not better than quote the following passage from the judgment of Mahmood J. In *Queen Empress v. Babulal* [(1884) I.L.R. 6 All. 509, 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 confession, by taking away from the police officers the advantage of proving such extorted confessions during the trial of accused persons."

This provision was thus enacted to eliminate from consideration confessions made to an officer who, by virtue of his position, could extort by force, torture or inducement a confession. An Excise Officer acting under s. 78(3) would be in the same position as Officer in charge of a police station making an investigation under Ch. XIV of the Code of Criminal Procedure. He would likewise have the same opportunity of extorting a confession from a suspect. It is, therefore, difficult to draw a rational distinction between a confession recorded by a Police Officer strictly so called and one recorded by an Excise Officer who is deemed to be a Police Officer.

A large number of decisions were cited at the bar bearing on the question expression as to whether the expression "Police Officer" used in s. 25 of the Evidence Act is restricted to the members of the force or has a wider meaning. It is unnecessary to refer to those decisions because in Barkat Ram's case [[1962] 3 S.C.R. 338], it has clearly been held that the expression is not to be construed in a narrow way. We may, however, refer to certain decisions in which the question whether an Excise Officer is a Police Officer within the meaning of that section has been specifically considered. There is, however, no unanimity in those decisions. Thus in *Ah Foong v. Emperor* [(1918) I.L.R. 46 Cal. 411], *Harbhanjan Sao v. Emperor* [(1927) I.L.R. 54 Cal. 601], *Matilall Kalwar v. Emperor* [A.I.R. 1932 Cal. 122], it was held that an Excise Officer is not a Police Officer. A contrary view was, however taken in *Ibrahim Ahmed v. King Emperor* [(1931) I.L.R. 58 Cal. 1260]. The view taken in that case was affirmed by a Full Bench in *Ameen Sharif v. Emperor* [(1934) I.L.R. 61 Cal. 607]. The view taken in Full Bench case as well as in *Ibrahim Ahmed's case* [(1931) I.L.R. 58 Cal. 1260], follows that of the Bombay High Court in *Nanoo Sheikh Ahmed v. Emperor* [(1926) I.L.R. 51 Bom. 78]. A similar view was also taken in *Public Prosecutor v. C. Paramasivam* [A.I.R. 1953 Mad. 917], *Ibrahim v. Emperor* [A.I.R. 1944 Lah. 57]. In *Radha Kishun Marwari v. King Emperor* [(1932) I.L.R. 12 Pat. 46 F.B.], it was, however, held that an Excise Officer functioning under the Bihar Excise Act is not a Police Officer and that a statement made to him is not within s. 25 of the Evidence Act. We need not, however, consider the last mentioned decision because there the learned Judges have construed the expression "Police Officer" in s. 25 of the Evidence Act to mean only an officer of the police force. That, however, is not in accord with what this Court has held in *Barkat Ram's case* [[1962] 3 S.C.R. 338]. We will briefly examine the other decisions.

In *Ah Foong's case* [(1918) I.L.R. 46 Cal. 411], all that Sanderson C.J., who delivered the leading judgment has said was that he did not think that Excise Officers in the case before the court could be said to be Police Officers and that the statements made by the accused to them were not admissible by reason of the fact that they were made to Police Officers. There is thus no discussion of the question at all. Apart from that the offence concerned in that case was one under the Opium Act and an Excise Officer acting under that Act was not conferred with the powers of an officer in charge of a police station under Ch. XIV of the Code of Criminal Procedure.

Harbhanjan Sao's case [(1927) I.L.R. 54 Cal. 601], merely followed this case as also did *Matilal's case* [A.I.R. 1932 Cal. 122]. *Ibrahim Ahmed's case* [(1931) I.L.R. 51 Cal. 1260], was a case which arose after the amendment of the Opium Act and it followed the view taken in *Nanoo Sheikh Ahmed's case* [(1926) I.L.R. 51 Bom. 78]. In *Nanoo Sheikh Ahmed's case* [(1926) I.L.R. 51 Bom. 78], a Full Bench of the Bombay High Court examined a large number of decisions commencing from *The Queen v. Hurribole Chunder Ghose* [(1876) I.L.R. 1 Cal. 207], *Marten C.J.* quoted with

approval the following two passages from that case :

"Its humane object is to prevent confessions obtained from accused persons through any undue influence, being received as evidence against them..... I consider that the term 'police officer' should be read not in any strict technical sense, but according to its more comprehensive and popular meaning." (p. 215).

"..... and I think it better in construing a section such as the 25th which was intended as a wholesome protection to the accused to construe it in its widest and most popular signification." (p. 216).

The Full Bench pointed out that in Ah Foong's case [(1918) I.L.R. 46 Cal. 411], there was hardly any discussion of the question and further pointed out that Excise Officers had limited power in Bengal under the Opium Act of 1878 whereas in Bombay they exercised the powers of investigation and so on. The learned Chief Justice then observed :

"..... 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, and that, accordingly any confession made to such an officer in the course of his investigation under the Abkari Act or the Criminal Procedure Code is inadmissible in evidence." (p. 94).

According to Shah J. s. 25 of the Indian Evidence Act embodies an important rule, which is to be given effect to as a matter of substance and not as a mere matter of form and that it is a perfectly fair interpretation of s. 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 functions also under other provisions of law, if for the investigation of offences under a particular Act he is empowered to exercise the powers of an officer in charge of a police station for the investigation of a cognizable offence. Fawcett J. pointed out that since the Legislature did not amend the Act even after the decision in Hurribole's case [(1876) I.L.R. 1 Cal. 207], where the expression "police officer" was given a wide meaning the courts would be justified in adhering to it. Kemp J. was of the opinion that though the term "Police Officer" should not be construed strictly it was not safe to lay down generally that the term should not be construed in its popular and most comprehensive sense. All the same he held that an Excise Officer acting under the Abkari Act of Bombay must be deemed to be a Police Officer inasmuch as he had the power of investigating into excise offences, Mirza J. concurred with this view but did not state any reasons.

In Ameen Sharif's case [(1934) I.L.R. 61 Cal. 607], the following question was referred to a Full Bench : "Is an excise officer who, in the conduct of investigation of an offence against the excise, exercises the powers conferred by the Code of Criminal Procedure upon an officer in charge of a police-station for the investigation of a cognizable offence, a police officer within the meaning of section 25 of the Indian Evidence Act ?" That case arose under the Bengal Excise Act and Mukerji J. who delivered the leading judgment, after pointing out that the powers of an Excise

Officer acting under the Opium Act (I of 1878) prior to its amendment by Opium (Bengal Amendment) Act, (Bengal Act V of 1933) are not quite the same as those of an Excise Officer acting under the Bengal Excise Act (Bengal Act V of 1909) observed that during arguments a much broader question had been submitted for the decision of the Full Bench as arising upon the order of reference taken along with the facts of the cases in which the reference was made. The learned Judge then said that to answer this question one has necessarily to consider the meaning of the term "Police Officer" as used in s. 25 of the Evidence Act which, though it may not rank with 'ancient statutes' in the sense in which that expression is used in forensic language, great regard ought to be paid, in construing a statute enacted long ago to the construction which was put upon it by those who lived about the time or soon after it was made, because the meaning which a particular word or expression bore in those days may have got mixed up or blurred during the interval that has elapsed. From that point of view he regarded the decision in the case of Queen v. Hurribole Chunder Ghose [(1876) I.L.R. 1 Cal. 207], one of very great importance. We have already referred to that decision but we have not proceeded upon the view that while construing the relevant provision we should apply the principle followed in construing an ancient statute. The Evidence Act is of the year 1872 and in Senior Electric Inspector v. Laxminarayan Chopra [[1962] 3 S.C.R. 146], this court while considering the question as to the meaning to be given to the expression "Telegraph line" occurring in s. 3, sub-s. (4) of the Telegraph Act, 1885, pointed out that the maxim *contemporanea expositio* as laid down by Coke was applied in construing ancient statutes but not in interpreting Acts which are comparatively modern. Indeed, the rule of construction which ought to be applied to a statute either ancient or modern is the same and that is to ascertain the intention of the Legislature. We, however, agree that it would be inappropriate to attach wide meaning to the words used by the legislature in a law made in remote ages when society was static and that the position would be different with respect to words used in a law made in a modern progressive society in which the frontiers of knowledge are fast expanding. The Evidence Act was enacted at a time when already a revolution in men's ideas had set in and considerable scientific advances had already been made. The maxim laid down by Coke cannot therefore properly be applied for construing the language used by the Legislature in s. 25 of the Evidence Act. The learned Judge did not, however, rest his judgment solely upon this ground. Upon a consideration of a large number of decisions of the Indian High Courts, he came to the conclusion that an Excise Officer exercising the powers of an officer in charge of a police station within the area to which he is appointed would fall within the expression "police officer" occurring in s. 25 of the Evidence Act. The learned Judge, there referred to s. 6 of the Police Act and some other provisions thereof and pointed out :

"The police, therefore, were instruments for the prevention and detection of crimes with the concomitant powers of apprehension and detention of offenders in order to their being brought to justice, such powers varying according to the position or status of the particular member of the body. In other words, "police officers" were officers whose duty was to prevent and detect crimes. Apart from any technical meaning which the term "police officer," occurring under any particular Act, might bear, the more comprehensive and popular meaning of the term was what has just been stated. In the Oxford Dictionary, two of the senses in which the word "police" is used are

said to be the following :-

'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.'

All these duties which police officers discharge are but different phases of and means for carrying out the two more comprehensive duties, namely, of prevention of crimes and detection of crimes. It is true that it has nowhere been defined what minimum aggregation of functions will constitute a person a police officer within the meaning of section 25 of the Act, but the more comprehensive and popular signification of the term "police officer", such as it was in 1861, is not difficult to appreciate from what was said by the legislature in the Police Act (V of 1861). Powers and duties of police officers under Act V of 1861 or under Act XXV of 1861 or under any other statute, or the different powers which different grades of police officers have under any particular enactment, are mere matters of details worked out in order to enable the entire body, taken as a whole, to carry out the two essential duties entrusted to them, namely, the prevention and detection of crimes. These, two features of the duties which the police have to discharge and especially that of detection of offenders, which involves the duty of holding investigations, have always been regarded as marking them out for special treatment in so far as confessions made to them are concerned." (pp. 623-4).

We agree with the learned Judge that by and large it is the duty of detection of offences and of bringing offenders to justice, which requires an investigation to be made, that differentiates police officers from private individuals or from other agencies of State. Being concerned with the investigation, there is naturally a desire on the part of a police officer to collect as much evidence as possible against a suspected offender apprehended by him and in his zeal to do so he is apt to take recourse to an easy means, that is, of obtaining a confession by using his position and his power over the person apprehended by him. We, therefore, agree with the observations of the learned Judge at p. 629 which are to the following effect :

"I can find no reason why in 1872 in respect of an offence under the then Opium Act (XIII of 1857) the legislature could have thought of excluding a confession made to a member of the regular police force but not a confession made to an abkari or excise officer, if such officer was, in fact, holding an investigation into an offence and was exercising such powers as a police officer is competent to exercise. The fact is that, in those days, he had no such powers and so could not exercise them. When, in course of time, he came to have those powers and was able to exercise them in respect of offences which were not known to law in those days and only subsequently came to be regarded as such, such an officer, when so acting, is an officer for whom the term "police officer" used in section 25 of the Evidence Act was meant."

The learned Judge then considered two points which were raised before the Full Bench as militating against the view expressed by him - one being that there is a distinction between "police officers" and "revenue officers" and the other that in s. 25 of the Evidence 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.

So far as the first of these points was concerned the learned Judge agreed with the answer given by Marten C.J. in the case of Nanoo Sheikh Ahmed [(1926) I.L.R. 51 Bom. 78], at p. 95 of the report to meet a similar point. As regards the second point he said that, whereas police officers, by reason of section 22 of Act V of 1861, are to be always 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.

We are in complete agreement with this view. Mallik and Ghose JJ. agreed with Mukherji J. But Jack J. did not accept Hurribole's case [(1876) I.L.R. 1 Cal. 207], as an authority for holding that an Excise Officer is a Police Officer merely because he has certain powers of a police officer. His conclusion, however, was that the application of s. 25 of the Evidence Act, in the case of an excise officer should be limited to a confession made to him in the course of an investigation of an offence by virtue of section 74(3) of the Excise Act, which gives him the status of a police officer for the purposes of the investigation. In other words, what he means is that though an Excise Officer cannot be regarded as a Police Officer, still, when he exercises certain functions under s. 74(3) of the Excise Act he will be acting as a Police Officer and, therefore, a confession made to him would be hit by s. 25 of the Evidence Act. Costello J. however, differed from the other learned Judges and based himself largely upon the decision in Radha Kishun Marwari's case [(1932) I.L.R. 12 Pat. 46. F.B.] and in conclusion he observed :

"In my opinion, endless difficulties inevitably arise when Judges endeavour to extend the plain provisions of any statutory enactment. Where the language of an enactment is unambiguous it should be interpreted strictly and, in a case such as the present, it is, to my mind, in the highest degree unsound, and indeed dangerous for the court, by subtlety of argument or by resorting to other statutes to extend provisions such as that contained in section 25. I am clearly and definitely of opinion that when the legislature used the expression 'police officer' they meant a police officer in the sense in which that expression is generally understood by the populace at large and in no other sense at all." (p. 648).

The learned Judge apparently overlooked the fact that in the popular sense Excise Officers are also regarded as Police Officers, being referred to as "the Excise Police."

Thus a consideration of the decisions of the High Courts in India shows that the preponderance of judicial opinion is in consonance with the view which we have already expressed.

There is one more reason also why the confession made to an Excise Sub-Inspector must be excluded, that is, it is a statement made during the course of investigation to a person who exercises the powers of an officer in charge of a police station. Such statement is excluded from evidence by s. 162 of the Code of Criminal Procedure except for the purpose of contradiction. Therefore, both by s. 25 of the Evidence Act as well as by s. 162, Cr.P.C. the confession of the appellant is

inadmissible in evidence. If the confession goes, then obviously the conviction of the appellant cannot be sustained. Accordingly we allow the appeal and set aside the conviction and sentences passed on the appellant.

RAGHUBAR DAYAL J. –

I agree that the appeal be allowed and the conviction and the sentences passed on the appellant be set aside, but for different reasons which I proceed to state :

I do not consider the confession to be inadmissible in evidence as being made to a police officer. The admissibility of the alleged confession of the appellant depends on the question whether the Excise Inspector comes within the expression 'police officer' in s. 25 of the Indian Evidence Act. I am of opinion that he does not.

In *State of Punjab v. Barkat Ram* [[1962] 3 S.C.R. 338], this Court held that a customs officer is not a police officer within the meaning of s. 25 of the Evidence Act. The view was based on the following considerations :

- (1) The powers which a police officer enjoys are powers for the effective prevention and detection of crime in order to maintain law and order while a customs officer 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 goods and safeguarding the recovery of customs duties.
- (2) The mere fact that customs officers possess certain powers similar to those of police officers in regard to detection of infractions of customs laws, is not a sufficient ground for holding them to be police officers within the meaning of s. 25 of the Evidence Act, even though the words 'police officer' are not to be construed in a narrow way but have to be construed in a wide and popular sense, as remarked in *Queen v. Hurribole* [(1876) I.L.R. 1 Cal. 207]. The expression 'police officer' is not of such wide meaning as to include persons on whom certain police powers are incidentally conferred.
- (3) A confession made to any police officer, whatever be his rank and whatever be the occasion for making it, is inadmissible in evidence, but a confession made to a customs officer when he be not discharging any such duty which corresponds to the duty of a police officer, will be inadmissible even if the other view be correct that he was a police officer when exercising such powers.
- (4) The Sea Customs Act itself refers to 'police officer' in contra-distinction to 'customs officer'.
- (5) Customs Officers act judicially when they act under the Sea Customs Act to prevent smuggling of goods and imposing confiscation and penalties and proceedings before them are judicial proceedings for the purpose of ss. 193 and 228 I.P.C.

A scrutiny of the various provisions of the Bihar and Orissa Excise Act, 1915 (Act II of 1915), hereinafter called the Act, leads to a similar conclusion with respect to Excise Officers on whom powers of investigating offences under the Act have been conferred. It will be useful to quote the relevant provisions of the Act and Government Orders which lead to such a conclusion.

The preamble of the Act reads :

"Whereas it is expedient to amend and re-enact the law in the Province of Bihar (and Orissa) relating to the import, export, transport, manufacture, possession, and sale of certain kinds of liquor and intoxicating drugs;....."

According to cl. (8) of s. 2, 'Excise Officer' means the Collector or any officer or other person appointed or invested with powers under s. 7. The relevant portion of s. 7 reads :

"(1) The administration of the Excise Department and the collection of the excise revenue within a district shall ordinarily be under the charge of the Collector.

(2) The State Government may by notification applicable to the whole of the State or to any specified local area, -

(a) appoint an officer who shall, subject to such control as the State Government may direct, have the control of the administration of the Excise Department and the collection of the excise revenue;

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Excise Commissioners are appointed under s. 7(2)(a). Among the other officers appointed under the other clauses of sub-s. (2) of s. 7 of the Act are Superintendents of Excise, Inspectors of Excise and Sub-Inspectors of Excise. The superintendent of Excise exercises certain specified powers of the Collector to whom he is subordinate.

Chapter VIII deals with offences and penalties. Section 63 provides for penalty for contempt of Court and reads :

"Every proceeding under this Act before a Collector, or before any officer, of such rank as the State Government may, by notification prescribe, who is exercising powers of a Collector, shall be deemed to be a 'judicial proceeding' within the meaning of s. 228 of the Indian Penal Code (45 of 1860)."

Officers who may exercise the powers of a Collector are Superintendents of Excise, Sub-Divisional Officers and Deputy Collectors.

Section 68 provides that the Collector or any Excise Officer specially empowered by the State Government in that behalf, not below the rank of Deputy Collector or Superintendent of Excise, may compound offences and release property liable to confiscation in certain circumstances on payment to the Collector such Excise Officer of a sum of money not exceeding Rs. 500/-.

Section 69 empowers the Excise Commissioner, Collector or any Excise Officer not below such rank as the State Government may, by notification prescribe and subject to any restrictions prescribed by the state Government by rule made under s. 89, to enter and inspect any place of manufacture or storage or sale of any intoxicant by a licensed manufacturer and to test and seize measures and to examine accounts and registers or a place where an intoxicant is kept for sale by such licensed person and to seize them if he had reasons to believe them to be false. Excise Officers not below the rank of a Sub-Inspector have been empowered under s. 69, under Notification No. 470-F dated January 15, 1919, of the Financial Department of the Government of Bihar and Orissa,

and we understand that this Notification is still in force.

Section 70 authorizes any officer of the Excise, Police, Salt, Customs or Land Revenue Department or any person empowered by the State Government in that behalf by notification, to arrest without warrant any person found committing offences punishable under s. 47, 49, 55 or 56 of the Act and to seize and detain any article which he has reason to believe to be liable for confiscation under the Act or any other law for the time being in force relating to the excise-revenue and to detain and search any person upon whom, and any vessel, raft, vehicle etc., upon which, he may have reasonable cause to suspect any such article to be. Sections 71 and 72 provide for the Collector or any Magistrate empowered to try offences punishable under the Act to issue warrant for the arrest of any person whom he has reason to believe to have committed or abetted any offence punishable under ss. 47, 49, 55 or 56 and to issue a warrant for the search of any intoxicant, material, still, utensil etc. in respect of which the alleged offence has been or is likely to be committed.

Section 73 empowers the Collector or any Sub-Divisional Magistrate or Magistrate of the first class to arrest or direct the arrest in his presence or to search or direct a search to be made in his presence when he be competent to issue a warrant of arrest or a search warrant. Section 74 empowers an Excise Officer not below such rank as the State Government may, by notification, prescribe, to arrest certain offenders when such Officer has reason to believe that an offence had been committed or was being committed and when the obtaining of a search warrant might afford the offender an opportunity to escape or conceal evidence of the offence. The State Government has prescribed that Excise Officer not below the rank of a Sub-Inspector can exercise the power under this section.

Section 77 is important for our purpose and is set out in full below :

"(1) A Collector may, without the order of a Magistrate, investigate any offence under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to enquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions."

Under sub-s. (2) of s. 77, the State Government has specially empowered Inspectors of Excise and Sub-Inspectors of Excise to investigate any offence punishable under the Act.

Section 78 reads :

"(1) Any collector, or any Excise Officer empowered under section 77, sub-section (2) may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise -

(a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station by section 160 to 171 of the Code of Criminal Procedure, 1898 (5 of 1898), and

(b) as regards offences punishable under section 47, section 49, section 55 or section 56 of the Act - any of the powers conferred upon the Police Officers in respect of cognizable offences by clause first of sub-section (1) of section 54 and by section 56 of the said Code; and the said portions of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the State Government by rule made under section 89, clause (o).

(2) Subject to any restrictions prescribed by the State Government a Collector or an Excise Officer empowered under section 77, sub-section (2), may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of section 156 of the Code of Criminal Procedure, 1898 (5 of 1898) the area to which an Excise Officer empowered under section 77, sub-section (2), is appointed shall be deemed to be a police-station, and such officer shall be deemed to be the Officer in charge of such station.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 77, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 68 of this Act, shall submit a report [which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898 (5 of 1898) be deemed to be a Police report] to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on Police-reports."

Section 79 deals with security and bail and empowers any Excise Officer not below such rank as the State Government may, by notification, prescribe, to release persons on bail or on their own bond. The State Government has prescribed that any Excise Officer not below the rank of Sub-Inspector can exercise this power.

Section 80 provides that articles seized and persons arrested under the warrant of the Collector shall be produced before the Collector and that articles seized and persons arrested under the Act by persons or officers not having authority to release arrested persons on bail on their own bond, shall be produced before or forwarded to the Collector or an Excise Officer empowered under s. 77(2) to investigate the offence, or to the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or the officer in charge of the nearest police station, whoever be nearer.

Section 82 reads :

"When any Excise Officer below the rank of Collector, or any officer in charge of a police-station, makes, or receives information of, any arrest, seizure, or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure, or search, or of the information received to the Collector, and to the Excise Officer (if any) empowered under section 77, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure, or search was made."

Section 84 directs that any person arrested for an offence under the Act shall be informed as soon as may be of the grounds for such arrest and shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journeys from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond such period without the authority of the Magistrate. Its sub-s. (2) reads :

"(2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1898 (5 of 1898), by a Collector or an Excise Officer empowered under section 77, sub-section (2), may exercise the powers conferred upon a Magistrate by the said section 167."

Section 85 reads :

"(1) Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search warrants and the production of persons arrested shall apply so far as may be, to arrests, detentions and searches made, summonses and warrants issued, and the production persons arrested under this Act.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

(3) Officers to whom a Collector's warrant is directed or endorsed and officers (other than Collectors) making arrests, searches or seizures under this Act, shall, for the purposes of the said provisions of the said Code, be deemed to be Police Officers."

Section 89 empowers the State Government to make rules to carry out the objects of the Act or any other law for the time being in force relating to the excise-revenue.

Section 95 provides that no suit shall lie in any Civil Court against the Government or any Excise Officer for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise-revenue.

Section 96 provides for limitations of suits and prosecutions and reads :

"No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act,

and, except with the previous sanction of the State Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of."

The provisions of s. 7, 89, 95 and 96 are sufficient to indicate that the action of Excise Officers under the Act and under any other law relating to excise revenue is treated alike. The Act is, therefore, like the Sea Customs Act, primarily concerned with the collection of the excise-revenue.

The object of the Act according to the preamble, is not to provide for the prevention and detection of crime but is to provide for conditions on which liquor and intoxicating drugs can be imported, exported, transported, manufactured and possessed and sold. Offences created under the Act are for contravening provisions in that regard and the power of Excise Officers to make arrests, searches or seizure or to investigate offences under the Act is incidental to the general power to see that the provisions of the Act are observed. The first consideration for holding Customs Offences not to be police officers would equally apply to the case of Excise Officers empowered to investigate offences.

An Excise Officer too cannot be a police officer for the purpose of s. 25 of the Evidence Act at all times. He can be a police officer only when he is discharging the duties of an investigating officer. In view of consideration No. 2, subject to what is said in s. 85(2), the expression 'police officer' in s. 25 of the Evidence Act cannot embrace Excise Officers on whom certain powers corresponding to the powers of the police officers are conferred.

Section 82 draws a distinction between an officer in charge of a police station and an Excise Officer who is empowered under s. 77(2) of the Act, as the former had to give information of any arrest, seizure or search under the Act which he makes, or about which he receives information to the Collector and to the Excise Officer empowered under s. 77(2) exercising jurisdiction in the area where any of these acts are done, and so consideration No. 4 is equally applicable in this case.

Excise Officers not below the rank of Superintendent of Excise and Deputy Collector can compound offences and release property liable to confiscation in the exercise of powers conferred under s. 68. Such a power implies that the culprit accepts his guilt and is prepared to compound the offence. Ordinarily the culprit will express such a desire to an Excise Inspector or Sub-Inspector in the first instance. It appears to me to be incongruous that a confession to such an Excise Officer be considered to be inadmissible on trial of a suspect in Court by considering these Excise Officers to be police officers, while the Act itself allows the superior "Excise Officer to compound the offence with the culprit and discharge him in view of s. 68 and the Government Notification. Further all proceedings before the Collector or Superintendent of Excise, S. D. O. and Deputy Collector exercising the powers of the Collector are judicial proceedings within the meaning of s. 228 I.P.C.

Section 85(3) provides about the officers who and the circumstances in which they can be deemed to be police officers for the purposes of the Criminal Procedure Code. All Officers other than Collectors who make arrests, searches or seizures under the Act are to be deemed 'police officers' for the purpose of the provisions relating to arrests, searches or seizures in the Criminal Procedure Code. It is therefore clear that the Legislature had in mind the police officers who perform the duties of making arrests, searches, and seizures, under the Criminal Procedure Code and provided that Excise officers or other persons authorized under the Act to perform these acts be deemed to be police officers for these purposes. It is therefore clear that Legislature did not contemplate that Excise Officers performing other duties corresponding to the duties of the regular police officers be deemed police officers merely on account of their performing those duties. It follows that Excise Officers when investigating offences under the Act are not to be deemed police officers for the purposes of the provisions about investigation in the Code of Criminal Procedure. If the Legislature had intended that officers who investigate offences under the Act be also deemed to be officers for the purposes of provisions regarding investigation in the Code of Criminal Procedure or s. 25 of the Evidence Act or for any other purpose under any other law, it could have made an express provision in that regard.

It is not suggested for the appellant that a Collector who is an Excise Officer and whom the power of investigating offences under the Act is conferred under s. 77 of the Act is a police officer within s. 25 of the Evidence Act. Sub s. (3) of s. 85 does not even provide that he be deemed to be a police officer when he makes arrests, searches or seizures under the Act. The Act itself therefore contemplates that the possession of a power to investigate offences under s. 77 and the right under s. 78 of the Act to exercise any of the powers conferred upon a police officer making an investigation or upon the officer in charge of a police station by ss. 160 to 171 of the Code of Criminal Procedure do not make the officer so empowered a 'police officer'.

Great reliance however is placed on the provision of sub-s. (3) of s. 78 of the Act for the contention that Inspectors and Sub-Inspectors of Excise are police officers for the purposes of s. 25 of the Evidence Act. Sub-s. (3) of s. 78 reads :

"For the purposes of section 156 of the Code of Criminal Procedure, 1898 (5 of 1898) the area to which an Excise Officer empowered under section 77, sub-section (2) is appointed shall be deemed to be a police-station, and such officer shall be deemed to be the officer in charge of such station."

It is argued that these provisions definitely provide that the area to which the Excise Officer empowered under s. 77(2) is appointed is to be deemed a police station and he be deemed to be an officer in charge of the said police station, and that therefore such an Excise Officer is a police officer within the meaning of that expression in s. 25 of the Evidence Act. I do not agree. The area is deemed to be a police station and he himself is deemed to be a police officer in charge of that police station for a very limited purpose. He is to be so considered for the purposes of s. 156 of the Code of Criminal Procedure and not for any other purpose.

Now, s. 156 of the code of Criminal Procedure reads :

"(1) Any officer in charge of a police-station may, without the order of a Magistrate investigate, any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XV relating to the place of enquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

What sub-s. (1) of s. 156 of the Code provides is already provided under sub-s. (2) of s. 77 of the Act which empowers such officers to investigate, without the order of a Magistrate, any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have the power to enquire into or try under the aforesaid provisions. Sub-s. (1) of s. 156 of the Code does nothing more than authorize an officer in charge of a police station, without the order of a Magistrate, to investigate any cognizable offence which the Court having jurisdiction over the local area or within the limits of the police station would have the power to inquire into or try under the provisions of Chapter XV relating to the place of enquiry or trial. The effect of sub-s. (3) of s. 78 can only be that in view of the provisions of sub-ss. (2) & (3) of s. 156 of the Code, no

proceeding by the Excise Officer so empowered under s. 77(2) shall, at any stage, be called in question on the ground that he was not empowered to investigate that offence and that any Magistrate empowered under s. 190 Cr.P.C. can order such an Excise Officer to investigate an offence under the Act. In this view, the provisions of s. 78(3) are of no help in concluding that the excise Officer empowered under s. 77(2) is a police officer for all the purposes of the investigation under the Code of Criminal Procedure, or for the purpose of s. 25 of the Evidence Act.

Further, the limited nature of the effect of sub-s. (3A) of s. 78 is also apparent when it is considered that sub-s. (1) of s. 78 provides that an Excise Officer empowered under s. 77(2) can exercise any of the powers conferred upon a police officer making an investigation or by an officer in charge of a police station by ss. 160 to 171 of the Code of Criminal Procedure. If the provisions of sub-s. (3) make an Excise Officer empowered under s. 77(2) a police officer in charge of a police station for the purposes of the entire investigation, there was no necessity to provide in sub. s. (1) that he could exercise the powers under certain sections specified therein.

The powers which the Excise Officer as an Investigating Officer exercises under s. 78(1) are also limited in scope. Under s. 160 Cr.P.C. he can summon persons for the purpose of investigation. He may examine such persons orally about the facts and circumstances of the case, just as a police officer can do under sub-s. (1) of s. 161. But the person so examined does not appear to be bound to answer all questions relating to such case put to him by the Excise Officers though he is bound to answer the questions put by the police officer in view of sub-s. (2) of s. 161 Cr.P.C., and by the Customs Officer under s. 171-A of the Sea Customs Act. Section 162 of the Code does not confer any power on a police officer. It only provides that any statement made by a person to a police officer in the course of an investigation under Chapter XIV of the Code could be used for no purpose except for the purpose provided in that sub-section, at any enquiry in respect of that offence under investigation at the time when that statement was made. An investigation by the Excise Officer is not an investigation under Chapter XIV of the Code of Criminal Procedure. He may take similar steps during investigation which a police officer has to take, but that does not make his investigation an investigation under Chapter XIV of the Code.

Again, s. 163 has no application so far as the question of conferring power is concerned. It rather enjoins upon a police officer not to offer or make or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, section 24, and not to prevent any person from making a voluntary statement in the course of an investigation. Section 164, again, deals with the recording of statements and confessions by Magistrates during the investigation under that Chapter, and can at best be said to empower by implication that these Excise Officers can send a confessing accused for the recording of confession to a Magistrate. In exercise of the powers under s. 165, Cr.P.C., the Excise Officer can search in certain circumstances a place for a thing which may be found useful for the investigation and, in view of s. 166 Cr.P.C. he can require any other Excise Officer or police officer to a cause search to be made.

Section 168 of the Code is of no use as it requires any subordinate police officer making investigation to report the result to the Station Officer as all Inspectors and Sub-Inspectors of Excise are required by s. 78(4) of the Act to report to the Magistrate for trying the accused if he has not stopped further proceedings in exercise of the powers under s. 78(2) and which he would do when there be not sufficient evidence to send the accused to the Magistrate for Trial. For similar reason, s. 169 Cr.P.C., is of no use to the Excise Officer empowered under s. 77(2). Section 170 empowers the officer in charge of a police station to send up the accused to a Magistrate if there be sufficient evidence. Under s. 171, he can send up a witness on complaint, in certain circumstances, in custody

to a Magistrate.

I may now consider certain cases in which a view has been expressed that when an officer, who is not an officer of the regular police force, is invested with powers of the Station Officer in charge of a police station for the purposes of the investigation of offences he is competent to investigate, that officer will be a police officer within the meaning of s. 25 of the Evidence Act during the course of the investigation he be making. The considerations which led to that view were mainly two. One was that neither the Code of Criminal Procedure of 1861 which originally enacted a provision identical with the one in s. 25 of the Evidence Act, nor the Evidence Act of 1872 itself defined a police officer, that the definition of the word 'police' in the Police Act of 1861 was not a definite definition but only an inclusive one and that the expression 'police officer' being not precise in defining the class of officers covered by it was to be interpreted according to what the original intention and object of the Legislature must have been in their enacting s. 25 of the Evidence Act. The second was that the expression 'police officer' in s. 25 of the Evidence Act should be construed according to the meaning that expression carried at or about the time that enactment was made and for that purpose, the view expressed in Hurribole's Case [(1876) I.L.R. 1 Cal. 207], was not only accepted but was interpreted to mean that anyone whom the people at large looked upon as a police officer would be included in that definition. I would first consider Hurribole's Case [(1876) I.L.R. 1 Cal. 207], to which reference had been made in Barkat Ram's Case [[1962] 3 S.C.R. 338].

In Hurribole's Case [(1876) I.L.R. 1 Cal. 207], Mr. Lambert who was a member of the regular police force and was so regarded outside Calcutta to which city the police Act of 1861 did not apply, was posted at Calcutta as Deputy Commissioner of Police. He was also invested with the powers of a Magistrate. The accused in that case made a confession originally to two policemen. It was taken down in writing. He was then brought before Mr. Lambert, the Deputy Commissioner of Police, at the police office. He affirmed the truth of his former statement to Mr. Lambert, who, in his capacity of a Magistrate, received and attested the statement. The question was whether this confession was hit by s. 25 of the Evidence Act or not. The decision of this question depended on the view whether Mr. Lambert was a police officer within the meaning of s. 25 of the Evidence Act. Garth C.J., repelled the contention that the expression 'police officer' comprised only that class of persons who were called in the Bengal Police Act members of the police force and observed; at p. 215 :

"..... that the term 'police officer' should be read not in any strict 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 the other words 'police officers' quite as much as the more ordinary members of the force;..... I think it better in construing a section such as the 25th which was intended as a wholesome protection to the accused, to construe it in its widest and most popular signification."

These observations simply mean that Mr. Lambert who was a regular member of the police force did not cease to be a police officer when posted as Deputy Commissioner of Police at Calcutta with Magisterial powers, that he would still be considered to be a police officer by the people in general and that therefore he should be held to be a police officer. The use of the comparative words 'narrow' and 'wider' with respect to the meaning to be given to there term 'police officer' have a particular reference in the context to the effect that a person, even though strictly not a police officer during the period of his tenure of office as Deputy Commissioner of Police, Calcutta, but a police officer in view of his regular service conditions, must be held to be a police officer as the people at large cannot make any distinction between the temporary character of his status when he was posted

at Calcutta as Deputy Commissioner of Police, who according to the definition, probably did not come within either the Bengal Police Act or the Police Act of 1861. I cannot take it that Garth C.J., meant, that in construing the term 'police officer' in s. 25 of the Evidence Act, Courts should resort to their notions as to whether the people at large considered the particular officer to be a police officer or not. Any such basis for construing this expression in s. 25 would be very slippery as there would be no real basic standard to form the foundation for such an interpretation.

Another question raised in that case was that the confession was admissible in view of s. 26 of the Evidence Act which provided that no confession made by a person in police custody would be admissible in evidence unless it was made in the immediate presence of a Magistrate, that Mr. Lambert was a Magistrate and that therefore the confession made to him was admissible in evidence. This contention was repelled on the ground that s. 25 of the Evidence Act was imperative and a confession made to a police officer under any circumstances was not admissible in evidence against the maker thereof. This means that Mr. Lambert's status as a Magistrate was completely ignored. The confession was not deemed to be taken by a Magistrate. It was taken to be made to a police officer as Mr. Lambert was a police officer on account of the service to which he belonged. It was merely as a Deputy Commissioner of Police that he enjoyed certain powers of a Magistrate. This view, therefore, can also be used in support of the contention that the mere conferment of certain powers of an officer of one class did not make that officer an officer of the class whose powers had been conferred on him. If conferment of powers of another officer could make the officer an officer of the other type during the period he be exercising the functions of the other officer, Mr. Lambert could have been treated a Magistrate when he purported to act as a Magistrate in receiving the confession of the accused. In my opinion, the case does not support the opposite view in any way. The only effect of the observations of the learned Chief Justice to the effect that s. 25 of the Evidence Act be constructed in its widest and most popular signification is that the expression 'police officer' is not restricted to only those police officers who come within the definition of 'police officer' within a certain Act dealing with police, but can include officers who belong to the police in general. Its effect is not to widen the scope of 'police officer' in s. 25 to such an extent as to make the Court embark on a general enquiry about popular concept in a certain area, about one being a police officer in the mind of the people at large.

It is true that the Criminal Procedure Code of 1861 or of later years does not define the expression 'police officer' while its various sections refer to police officers. For the purpose of this case, we may refer to s. 148 of the Code of Criminal Procedure, 1861 (Act XXV of 1861).

Section 148 was :

"No confession or admission of guilt made to a Police Officer shall be used as evidence against a person accused of any offence."

Which Officers were contemplated to be 'police officers' by the Code of Criminal Procedure of 1861 ? I am of opinion that the Code of Criminal Procedure could not have but referred to the regular police officers for the purpose of its various enactments. It must have fixed upon a particular class of officers on whom the various powers of a police officer were being conferred by the Code and on whom the Code imposed certain important duties. Surely these powers were not conferred and duties were not imposed on a vague class of persons whose powers or liability would be subject to determination by Courts in accordance with the popular impression. The only definite class of people would be then members of the police according to the various enactments in force and not necessarily under the general Police Act of 1861 or any special Police Act applicable to the

Presidency Towns, or those who, under certain statutory provisions be deemed to be police officers as, in that case, it would be the Legislature which itself would lay down the class of persons who would be treated to be police officers. I may say that it was not foreign to the Legislature in 1861 to make provisions with respect to certain persons being deemed to be officers of a certain class.

Historically, I do not find the expression 'police officer' or 'police' to be a vague one. In 1793, a number of Regulations were made by the Governor General in Council. They dealt with many subject connected with the administration of the territory under the control of the East India Company. The preamble of Regulation XXII of 1793 indicates that the object of that Regulation was to establish an efficient police throughout the country whereby offenders may be deprived of all hope of eluding the pursuit of officers of justice as the clause in the engagements of the landholders and farmers of land by which they were bound to keep the peace, and in the event of any robbery being committed in their respective estates or farms, to produce both the robbers and the property plundered, was found nugatory. Section II of this Regulation reads :

"The police of the country is, in future, to be considered under the exclusive charge of the officers who may be appointed to the superintendence of it on the part of Government. The landholders and farmers of land who were bound to keep up establishments of tannahdars and police officers for the preservation of the peace are accordingly required to discharge them, and all landholders and farmers of land are prohibited from entertaining such establishments in future."

Section III specifically provided that in future landholders and farmers would not be considered responsible for robberies committed in their respective estates or farms unless certain facts mentioned therein existed. This seems to be the first Regular Code for the establishment of the efficient police in the country under the control of the British. Formerly, it was the landholder and the farmer of land who discharged the functions of the police for the maintenance of peace and for preventing the commission and detection of crimes, especially crimes against property, robbery theft, etc. It is to be noticed that according to the preamble and the provisions of s. II of this Regulation, the entire police was to be in the exclusive charge of the officers appointed by the Government. The Government had to appoint the police officers as such.

Subsequent Regulations and Acts developed the law about the police on the foundations laid by this Regulation. The object of the Police Act of 1861 is also to cover the entire police in the country. Its title is : 'An Act for the Regulation of Police'; and its preamble reads :

"Whereas it is expedient to reorganise the Police and to make it a more efficient instrument for the prevention and detection of crime....."

The expression 'general police district' according to s. 1, embraces any Presidency, State of place, in which the Act shall be ordered to take effect. Section 2 provides that the entire police establishment under a State Government shall, for the purposes of the Act, be deemed to be one police force and shall be formally enrolled; persons of this establishment, therefore, formed a class by themselves. Section 3, however, provides that the superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate. This does not speak of the superintendence of the police force or the police establishment, but puts the entire police within the State under the control of the Government. The administration of such entire police is vested in the Inspector General of Police by s. 4 and within a district is vested in the District Superintendent. These officers exercise no administrative control

over the Excise Officers.

Section 47 makes it lawful for the State Government to declare that any authority which is being exercised by a Magistrate of the District over any village watchman or other village police officer for the purpose of police shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police, This is a clear indication that the Act purported to bring the entire police whether controlled under the act or not, within its purview in the area where the Act be in force.

It was on account of the various persons under several Acts or otherwise discharging the functions of the police that the Police Act of 1861 provided that the word 'police' in the Act meant to include all persons who would be enrolled under that Act, indicating thereby that the expression could cover persons other than those enrolled under that Act. Section 21 of the Police Act refers to some of them, viz., hereditary or other police officer or police officers appointed under Act XX of 1856, the Bengal Chowkeydari Act. The inclusive definition of 'police' does not appear to me to be so wide as to include any one to whom powers similar to those of a police officer are conferred by any Act.

The history of the Excise Law also shows that Excise Officers have been considered different from police officers and that clear provisions were enacted for certain officers of the Revenue and Police Departments to be deemed Excise Officers.

Regulation XXXIV of 1793 re-enacted with modifications the rules passed on April 16, 1790, and subsequent dates, for levying a tax upon intoxicating liquors and drugs and for preventing illicit manufacture and vend of them. This was repealed by Regulation X of 1813.

Section I of. Regulation X of 1813 states with respect to the purpose of the Regulation :

"..... and whereas it will tend to the public convenience to reduce the whole of the Regulations at present in force with respect to that branch of the public revenue, and respecting likewise the duties on intoxicating drugs, taury, and putchwye, to one Regulation, with alterations and amendment, the following rules have been passed".

and thus emphasized that the Regulation related to the branch of public revenue. Section XVIII provided that for the more convenient collection of the duties on spirituous liquors etc., officers would be appointed by the collectors to be denominated abkarry darogahs for the collection of the said duties. These darogahs were to apprehend and send to the Collector any individual having an unlicensed still in his possession or engaged in the illicit sale of spirituous liquors etc. Section XXII provided that all investigations which it may be necessary to institute respecting the illicit manufacture or sale of spirituous liquors etc., shall be conducted by the collectors of land revenue or other public officers entrusted with the charge of the abkarry mohaul. Section XXII further empowered the Collector or other officers entrusted with the charge of akbarry mohaul to cause the persons charged with or suspected of offences under the Regulation to be apprehended so that a regular enquiry might be made into the merits of the case. Officers in charge of the abkarry mohaul were given power under s. XXIII to issue search warrants. Section XXXI made the collectors of land revenue entitled to a commission on the net amount of the abkarry revenue realised by them.

Act XXI of 1856 repealed Regulation X 1813. Its title is 'An Act to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal' and the preamble states :

"Whereas it is expedient that the laws relating to the manufacture of spirits and the sale of spirituous and fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom, should be consolidated and amended : It is enacted as follows."

Section II says that the Collectors of land revenue will be in charge of the collection of the revenue arising from the manufacture of spirits and the sale of spirits, liquors and intoxicating drugs. Section IV empowered the Collectors to appoint darogahs, jamadars, peons, surveyors, gaugers and other officers for the collection of the abkaree revenue and for the prevention of smuggling. The office of abkaree darogah could be combined with that of any tuhseeldar, naib tuhseeldar or peshkar. In such cases s. IV provided that those officers and officers subordinate to them would be held and deemed to be Abkaree officers within the meaning of the Act. The Abkaree officers were empowered under s. LV to enter and inspect shops or premise of licensed Manufacturers or retail vendors. Section LVI empowered them to stop and detain any person carrying articles liable to confiscation under the Act and to seize such articles and also to arrest the person in possession of them. Powers of arrest under certain circumstances were also conferred on them by s. LVII.

Section LXV further provided that all police officers were required to aid the Abkaree Officers in the due execution of the Act upon notice given or request made by such officers. The expression 'police officers' and 'abkaree officers' in these sections refer to officers of the regular police and officers of Abkaree respectively. The Act makes a distinction between the two, and rightly. Section LVIII empowered an Abkaree officer above the rank of a jamadar of peons to enter and search certain places in the presences of the darogah or other officers of police in circumstances specified in that section.

Section LIX provided for the vesting of certain powers in the officers of the Police, Customs and Revenue Departments and authorised the Government to invest those officers with powers with respect to the seizure of and search for spirituous and fermented liquors and intoxicating drugs and the arrest of persons found in possession of them. It further provided that all such officers when so empowered, as well as all police, Customs and Revenue Officers, when acting under the authority conferred by that section, for the suppression of illicit dealings in opium, would be held and deemed to be Abkaree Officers within the meaning of the Act.

It is clear, therefore, from the provisions of ss. IV and LIX that the Legislature specifically provided, whenever it considered necessary, for certain officers to be deemed to be Abkaree Officers when, by virtue of their regular service, they were not Abkaree Officers.

It was in 1861, as already stated, that the Criminal Procedure Code, by s. 148, provided that no confession made to a Police Officer would be used in evidence against an accused person. In view of the provisions of the first Regulation XXII of 1793 dealing with the creation of the Police under the direct control of the Government and of the Abkaree Department governed by Regulation XXXIV of 1793 up to 1856, it is not possible to say, in my opinion, that the Legislature when using the expression 'police officer' in s. 148 of the Code of Criminal Procedure of 1861, intended that expression to include the Abkaree Officers who had powers of investigation, though without any reference to the procedure to be followed in carrying out the investigation necessary for the purpose of establishing the offences under the Abkaree Act against the alleged culprits. It is also clear from certain provisions referred to above that the Legislature did state in clear terms that certain officers of the other departments would be deemed to be Abkaree Officers in certain circumstances. It follows therefore that if the Legislature had intended to use the expression 'police officers' in the

Code of Criminal Procedure of 1861 or in s. 25 of the Evidence Act of 1872 in such a sense as to include such officers of departments other than the Police on whom powers of investigation were conferred, it could have very easily said that a confession to a police officer or such other officers would be inadmissible in evidence or it could have explained the expression 'police officer' for the purposes of that section, that is s. 148 of the Criminal procedure Code of 1861 or s. 25 of the Evidence Act of 1872. Its omission to do so, to my mind, is a clear indication of the fact that the Legislature had no intention to use the expression 'police officer' in s. 25 of the Evidence Act in such a general sense in which it is construed in *Nanoo v. Emperor* [(1926) I.L.R. 51 Bom. 78], *Ameen Sharif v. Emperor* [(1934) I.L.R. 61 Cal. 607], *Public prosecutor v. Paramasivam* [A.I.R. 1953 Mad. 917].

I may refer to the case cited as *Radha Kishun Marwari v. King Emperor* [(1932) I.L.R. 12 Pat. 46], where it was held that an Excise Officer was not a police officer within the meaning of s. 25 of the Evidence Act. Of the three Judges, Courtney Terrel, C.J., expressed his disagreement with the view of the Bombay High Court in *Nanoo v. Emperor* [(1926) I.L.R. 51 Bom. 78], and, after stating that the decision in *Hurribole's case* [(1871) I.L.R. 1 Cal. 207], had been much mis-understood, said :

"The fact is that the term 'police officer' is sufficiently well understood to allow of its use without any precise definition. Thus it is well recognised that different countries and states confer upon their respective police officers different powers. Nevertheless it is not difficult to decide whether any particular individual is, or is not, a police officer in any particular country and it has been held that a confession made to a police officer of a foreign force in the country where he is in fact a police officer is not admissible in an Indian trial."

He also expressed the opinion that the Courts of Justice were not primarily concerned with the objects with which the legislature enacted any particular law and that the legislature might not have finally enacted a provision to carry out the entire object with which it tended to enact it, and that in cases where the legislature had not thought fit to express its intention otherwise than by the words of the section; those words must be followed. Fazl Ali, J. agreed with his views and stated at p. 56 :

"It appears to me 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."

He pertinently remarked at p. 57 :

"To take view would, in my opinion, be to ignore the popular meaning of the term 'police officer' and enlarge unduly the scope of the section. There was nothing to prevent the framers of the Evidence Act from saying expressly that confessions made to a police officer as well as those persons who are for the time being and for certain limited purposes invested with the powers of a police officer are inadmissible in evidence."

AGARWALA J.,

expressed the opinion that the expression 'police officer' in s. 25 of the Evidence Act referred to the police officer enrolled in or appointed as members of the police force.

I agree with respect with the wider view taken by the learned Chief Justice and Fazl Ali, J.

I therefore hold that the Excise Inspector and Sub-Inspector empowered by the State Government under s. 77(2) of the Act are not police officers within the meaning of s. 25 of the Evidence Act and that the aforesaid officers cannot be treated to be police officers for the purposes of s. 162 of the Code of Criminal Procedure. Section 162 does not confer any power on a police officer. It deals with the use which can be made of the statements recorded by a police officer carrying out investigation under Chapter XIV of the Code. The investigation which the aforesaid Excise Officer conducts is not under Chapter XIV of the Code, but is under the provisions of the Act and therefore this is a further reason for non-applicability of s. 162 Cr.P.C. to any statements made by a person to an Excise Officer during the course of his investigating an offence under the Act.

In this case, the evidence on record about the appellant's being found in possession of Nepali Ganja is not such on which reliance could be placed for maintaining his conviction. The High Court relied on it in view of the confession of the appellant. The conduct of the Excise Inspector in tampering with the seizure memo is such as to affect his bona fides and therefore there is a lot of doubt about the alleged confession by the appellant being voluntary. I am not satisfied about the confession being voluntary and would therefore not use it in support of the unsatisfactory statements of the prosecution witnesses about the recovery of the ganja from his possession and would not sustain the conviction even though the High Court has recorded a finding of fact that Ganja was recovered from the appellant's possession. The High Court did not consider the tampering of the seizure memo in all its aspects or its effect on the alleged voluntariness of the confession and, consequently, on the case.

Appeal allowed.

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