

SUPREME COURT OF INDIA

Illias

Vs.

Collector of Customs, Madras

Crl.A.No.45 of 1967

(J. C. Shah, V. Ramaswami, G. K. Mitter, K. S. Hegde and A. N. Grover, JJ.)

31.10.1968

JUDGEMENT

GROVER, J.:-

1. The main point in this appeal, by special leave, is whether the statements of the appellants and other accused persons recorded by the customs authorities under the provisions of the Customs Act 1962 (Act 52 of 1962), hereinafter called the New Act, were admissible in evidence at their trial for the alleged offences under Section 120-B of the Indian Penal Code read with Section 135 of the New Act and Sections 23 (1A) and 23B of the Foreign Exchange Regulation Act, 1947 and under Rule 131-B of the Defence of India Rules.

2. The facts need not be stated in great detail. A complaint was laid by the Collector of Customs, Madras, against 10 persons for having committed the above offences. The complaint related to an occurrence which involved transport of 750 bars of gold each weighing 10 tolas valued at more than 7 lacs from Bombay to Madras. The statements of the accused persons were recorded by the Inspector of Customs and other customs authorities before the complaint was filed. After a

preliminary enquiry the Second Presidency Magistrate, George Town, Madras committed 9 of the accused persons to stand their trial at the City Sessions Court, the charges being confined to the transaction connected with 700 bars of gold only. Seventeen charges were framed on October 29, 1965, by the learned Sessions Judge against the appellant and eight other accused persons for the various offences mentioned above. When the hearing before the Sessions Court commenced the prosecution sought to file the statements of the accused persons recorded by the customs authorities. Certain preliminary objections were raised on behalf of the accused to the admissibility of those statements. The first was that the officers of the customs department who had recorded the statements must be deemed to be police officers and the statements being of a confessional nature were not admissible in evidence by virtue of the provisions of Section 25 of the Indian Evidence Act. The second objection was that the investigation conducted by the Customs Officer must be deemed to be under Chapter XIV read with Section 5 (2) of the Criminal Procedure Code and the statements thus became inadmissible under Section 161 read with Section 162 of the Code. The third objection was based on Article 20 (3) of the Constitution involving testimonial compulsion. This objection was not mentioned in the order of the learned Sessions Judge but it was alleged to be raised before the High Court. The matter went up to the High Court on the Revisional Side because the learned Sessions Judge took the view that the statements given by the accused persons to the Customs Officers could not be received in evidence. The learned Single Judge who heard the revision petition, referred the following questions to a full bench owing to their importance:

"Are statements recorded by enquiring officers of the Customs Department under Section 107 (108) of the Customs Act, 1962, inadmissible in evidence in a criminal trial by reason of the bar under: (1) Section 25 of the Indian Evidence Act; (2) Section 162 of the Criminal Procedure Code; and (3) Art. 20 (3) of the Constitution."

The Full Bench answered all the three questions against the accused persons. Only one out of them, Illias, has appealed to this Court.

3. Learned Counsel for the appellant has not pressed the second point. As regards the third point, it was conceded before the Full Bench of the High Court that when the statements were recorded the investigation had not reached the stage when the particular persons had been accused of an offence within the meaning of Article 20 (3) of the Constitution. In view of this concession learned counsel for the appellant has submitted that the matter be left undecided so that it may be open to the appellant to make whatever submissions he wishes to make before the Trial Court when any such statement is formally tendered for admission into evidence.

4. Adverting to the first point the main endeavour of the counsel for the appellant has been to demonstrate by reference to various provisions of the new Act that statements recorded by the Customs Authorities of a confessional nature would be hit by the provisions of Section 25 of the Evidence Act. In *State of Punjab v. Barkat Ram*. (1962) 3 SCR 338 = (AIR 1962 SC 276), it was held by the majority that Customs Officers were not police officers for the purpose of Section 25 of

the Evidence Act and the statements to Customs Officers were admissible in evidence at the trial of persons accused of offences, inter alia, under the Sea Customs Act, 1878, hereinafter called the "old Act." It has been submitted that a later decision of this Court in *Raja Ram Jaiswal v. State of Bihar*, (1964) 2 SCR 752 = (AIR 1964 SC 828) which related to the question whether an Excise Inspector exercising powers under the Bihar and Orissa Excise Act was a police officer for the purposes of Section 25 of the Evidence Act goes a great deal in favour of the appellant particularly when the provisions of the new Act wherein substantial departure has been made from those of the old Act are kept in view. As will be presently seen there is yet a third decision of the constitution bench of this Court in *Badku Joti Savant v. State of Mysore*, (1966) 3 SCR 698 = (AIR 1966 SC 1746) which related to the provisions of the Central Excises and Salt Act which goes against the contention passed by the counsel for the appellant. At any rate it does not appear that the majority view expressed in *Barkat Ram's case*, (1962) 3 SCR 338 = (AIR 1962 SC 276) has been shaken in any manner so far as statements recorded by a Customs Officer under the old Act are concerned. Indeed in a recent decision of this Court *P. Shankar Lal v. Asstt. Collector of Customs, Madras*, Criminal Appeals Nos. 52 and 104 of 1965, D/- 12-12-1967 (SC), it has been reaffirmed that there is no conflict between the cases of *Raja Ram Jaiswal*, 1964-2 SCR 752 = (AIR 1964 SC 828) and *Barkat Ram*, (1962) 3 SCR 338 = (AIR 1962 SC 276), the former being distinguishable from the latter.

5. Before the previous pronouncements of this Court are discussed it is necessary to compare the relevant provisions of the new Act and the old Act.

6. Under the old Act Section 173 provided that persons reasonably suspected of offences under that Act might be arrested by any officer of Customs or other persons duly employed for the prevention of smuggling. Under the new Act according to Section 104 if an officer of customs empowered in this behalf by general or special order of the Collector of Customs has reason to believe that any person has been guilty of an offence punishable under Section 135, he may arrest such person. As regards the power to search, Chapter XVII of the old Act contained the relevant provisions. Section 169 conferred the power on a Customs Officer to search, on a reasonable suspicion. Under Section 170 when any officer of customs was about to search any person under the provisions of Section 169 such person could require that officer to take him, previous to search, before the nearest magistrate or customs-collector. Section 172 conferred power on a Magistrate to issue search warrants on an application by the customs-collector. In the new Act Section 100 confers the power to search suspected persons entering or leaving India. Section 102 contains provision analogous to Sec. 170 of the old Act with some minor differences. Under the old Act every person arrested on the ground that he had been guilty of an offence under that Act had to be forthwith taken to the nearest Magistrate or customs-collector, (Section 174). Under the new Act Section 104 (2) provides that every person arrested shall, without unnecessary delay, be taken to a Magistrate. Lastly Section 171A of the old Act conferred power on Customs Officer to summon persons to give evidence and produce documents. Under the new Act Section 107 gives the power to Customs Officers empowered by general or special order of collector of customs to examine persons acquainted with the facts and circumstances of the case or to require any person to produce or deliver any document. Section 108 confers power on a gazetted officer of customs to summon persons for giving evidence or producing documents.

7. The substantial difference, however, between the two enactments as has been pointed out by the High Court relates to (1) the procedure after arrest; (2) the procedure for enquiry or investigation and (3) the procedure for search.

8. As regards the procedure after arrest a significant change which has been made in the new Act is contained in sub-section (3) of Section 104. It is provided thereby that where an officer of customs has arrested any person under sub-section (1) he shall, for the purpose of releasing such person, on bail or otherwise have the same power and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure. Sub-section (4), however, makes an offence under the new Act non-cognizable notwithstanding anything contained in the Code of Criminal Procedure (the offences under the old Act were also non-cognizable). In the old Act there was no provision conferring the power of releasing a person on bail or otherwise on a Customs Officer and only a Magistrate could grant bail. A great deal of emphasis has been laid by the counsel for the appellant on the power of granting bail which has now been given to a Customs Officer under the new Act. It is pointed out that such a power goes a long way and assists a great deal in extortion of confessions against which Section 25 of the Evidence Act contains the main safeguards. It has also been contended that all the powers of an officer-in-charge of the police station under the Code of Criminal Procedure have been conferred on an officer of Customs in the matter of releasing an arrested person on bail or otherwise. It has even been suggested by the appellant's counsel that the word "otherwise" invests the Customs Officer with all the powers which an officer-in-charge of a police station can exercise under Chapter XIV of the Code. It may be observed at once that the word "otherwise" clearly relates to releasing a person who has been arrested and cannot possibly be construed in the manner suggested by the learned counsel.

9. In the old Act the provisions containing the procedure for enquiry were to be found in Section 171A. As stated before, any Officer of Customs duly employed in the prevention of smuggling had the power to summon any person whose attendance he considered necessary either to tender evidence or to produce a document in any enquiry which such officer was making in connection with smuggling of goods. Any person so summoned was bound to attend either in person or by an authorised agent and he was also bound to state the truth upon any subject respecting which he was examined or make a statement and to produce such documents and other things as might be required. Every such enquiry was by a deeming provision to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Under the new Act the enquiry can be of two kinds. Under Section 107 any Officer of Customs empowered by the Collector of Customs can require any person to produce or deliver any document etc., or he can examine any person acquainted with the facts and circumstances of the case. Section 108 contains the second set of powers which are analogous to Section 171A of the old Act, the two sections being almost similar in language. The contention on behalf of the appellant is that Section 107 of the new Act gives power of investigation to officers of customs similar to those exercisable by a police officer under Chapter XIV of the Criminal Procedure Code. Now a Police officer under Section 160 of the Code can, by an order in writing, require the attendance of any person within the limits of his own or any adjoining station and he can under Section 161 examine orally any person supposed to be acquainted with the facts and circumstances of the case. The submission of the appellant's counsel therefore is that Section 107 is similar to Sections 160 and 161 and the Customs Officer conducting an enquiry or investigation relating to offences under the new Act enjoys the same power as a police

officer making an investigation under Chapter XIV of the Code of Criminal Procedure. It is pointed out that under the old Act no such powers were conferred on the Customs Officer and it was with reference to Section 171A of the old Act that this Court in Barkat Ram's case, (1962) 3 SCR 338 = (AIR 1962 SC 276) laid emphasis on the judicial nature of the proceedings held under that section. The distinction, it is said, no longer obtains owing to the provisions of Section 107 of the new Act.

10. As regards the procedure for search the important change which has been made in the new Act is that under Section 105 if the Assistant Collector of Customs has reason to believe that any goods liable to confiscation or any documents or things are secreted in any place, he may authorise any Officer of Customs to search or may himself search for such goods, documents or things. Under the old Act it was necessary to obtain a warrant from a Magistrate in accordance with Section 172 and the warrant could be executed in the same way and had the same effect as a search warrant issued under the law relating to criminal procedure.

11. An examination of the previous decisions of this Court may now be made in order to test the validity of the argument raised on behalf of the appellant that owing to the substantial changes made in the new Act statements of a confessional nature recorded by the Customs Officers should be excluded under Sec. 25 of the Evidence Act on the ground that these officers are police officers within the meaning of that section. In the majority judgment in Barkat Ram's case, (1962) 3 SCR 338 = (AIR 1962 SC 276) a comparison was made between the duties and powers of police officers and Customs Officers which may be summarised as follows:

(1) The police is the instrument for the prevention and detection of crime which can be said to be the main object of having the police. The powers of Customs Officers are really not for such purpose and are meant for checking the smuggling of goods and due realization of customs duties and for determining the action to be taken in the interest of the revenue of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines.

(2) The customs staff has merely to make a report in relation to offences which are to be dealt with by a Magistrate. The Customs Officer, therefore, is not primarily concerned with the detection and punishment of crime but he is merely interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties.

(3) The powers of search etc., conferred on the Customs Officers are of a limited character and have a limited object of safeguarding the revenues of the State and the statute itself refers to police officers in contradistinction to Customs Officers.

(4) If a Customs Officer takes evidence under Section 171A and there is an admission of guilt, it

will be too much to say that that statement is a confession to a police officer as a police officer never acts judicially and no proceeding before him is deemed to be a judicial proceeding for the purpose of Sections 193 and 228 of the Indian Penal Code or for any other purpose.

12. Adverting to Raja Ram Jaiswal's case, (1964) 2 SCR 752 = (AIR 1964 SC 828) it is significant that by virtue of Section 77 (2) read with Section 78 (3) of the Bihar and Orissa Excise Act, 1915, an Inspector or Sub-Inspector was deemed to be an officer-in-charge of a police station and was entitled to investigate any offence under the Excise Act. He could exercise all the powers which an officer-in-charge of a police station could exercise under Chapter XIV of the Code. It was therefore held by the majority that a confession recorded by an Excise Officer during an investigation into an excise offence could not reasonably be regarded as anything different from a confession to a police officer. Barkat Ram's case, (1962) 3 SCR 338 = (AIR 1962 SC 276) was distinguished on a number of grounds. One was that the Excise Officer did not exercise any judicial power just as the Customs Officer did under the Sea Customs Act 1878; secondly the Customs Officer was not deemed to be an officer-in-charge of a police station and therefore he could not exercise powers of such an officer under the Code of Criminal Procedure. Further the Customs Officer could make an enquiry but he had no power to investigate into an offence under Section 156 of the Code. Even though some of the powers set out in Chapter XVII of the Sea Customs Act were analogous to those of the police officer under the Code, they were not identical with those of a police officer and were not derived from or by reference to the Code. It was pertinently observed that the Customs Officer was not entitled to submit a report to a Magistrate under Section 190 of the Code with a view that cognizance of the offence be taken by a Magistrate. It was then said at p. 766 (of SCR) = (at p. 833 of AIR):

"The test for determining whether such a person is a "police officer" for the purpose of Section 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 exercised 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 Section 25, that is, the recording of a confession. In other 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 as to what other powers he enjoys."

Emphasis was laid on the police officers having such powers which enable them to exercise a kind of authority over the persons arrested which facilitate the obtaining from them statements which may be of incriminating nature. The case of Raja Ram Jaiswal, (1964) 2 SCR 752 = (AIR 1964 SC 828) came up for discussion in the third of series of these cases, namely, (1966) 3 SCR 698 = (AIR 1966 SC 1746). The appellant there had been found in possession of contraband gold. He was prosecuted under Section 167 (81) of the Sea Customs Act read with Section 9 of the Land Customs Act. A question arose whether the statement made by the appellant to the Deputy Superintendent of Customs and Excise was admissible in evidence. The contention raised was that the Central Excise Officer under the Central Excises and Salt Act (Act 1 of 1944), hereinafter called the "Central Excise Act", was a police officer within the meaning of those words in Section 25 of the Evidence

Act. Therefore even though the Deputy Superintendent of Customs and Central Excise had acted under the power conferred on him by the Sea Customs Act, he was still a police officer and the statement made to him which was in the nature of a confession was inadmissible in evidence. This Court referred to the difference of opinion among the High Courts as to the meaning of the words "police officer" used in Section 25 of the Evidence Act. One view was that those words must be construed in a broad way and all officers would be police officers within the meaning of those words if they had the powers of the police officer with respect to investigation of offences with which they were concerned even if they were police officers properly so called or not. The narrow view was that these words in Section 25 meant a police officer properly so called and did not include officers of other departments of Government who might be charged with the duty to investigate, under special Acts, special crimes like the excise or customs offences etc. The Court proceeded on the assumption that the broad view was correct. After examining the various provisions of the Central Excise Act and in particular Section 21 it was observed that a police officer for the purpose of Clause (b) of Section 190 of the Code of Criminal Procedure could only be one properly so called. A Central Excise Officer had to make a complaint under Cl. (1) of Section 190 of the Code to a magistrate to enable him to take cognizance of an offence committed under the special statute. The argument that a Central Excise Officer under Section 21 (2) of the Central Excise Act had all the powers of an officer-in-charge of a police station under Chapter XIV of the Code and therefore he must be considered to be a police officer within the meaning of those words in Sec. 25 of the Evidence Act was repelled for the reason that though such officer had the power of an officer-in-charge of a police station he did not have the power to submit a charge-sheet under Section 173 of the Code. Raja Ram Jaiswal's case, (1964) 2 SCR 752 = (AIR 1964 SC 828) was distinguished on the ground that Section 21 of the Central Excise Act was in terms different from Section 78 (3) of the Bihar and Orissa Excise Act 1915 which provided that for the purpose of Section 156 of the Code of Criminal Procedure the Excise Officer empowered under Section 77 (2) of that Act shall be deemed to be the officer-in-charge of a police station. The following observations at page 704 (of SCR) = (at p. 1749 of AIR) are indeed important:

"All that Section 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the power to submit a charge-sheet under Section 173 of the Code of Criminal Procedure, for unlike the Bihar and Orissa Excise Act, the Central Excise Officer is not deemed to be an officer-in-charge of a police Station."

13. It was reiterated that the appellant could not take advantage of the decision in Raja Ram Jaiswal's case, (1964) 2 SCR 752 = (AIR 1964 SC 828) and that Barkat Ram's case, (1962) 3 SCR 338 = (AIR 1962 SC 276) was more apposite. The ratio of the decision in Badku Joti Savant's case, (1966) 3 SCR 698 = (AIR 1966 SC 1746) is that even if an officer under the special Act has been invested with most of the powers which an officer-in-charge of a police station exercises when investigating a cognizable offence he does not thereby become a police officer within the meaning of Section 25 of the Evidence Act unless he is empowered to file a charge-sheet under Section 173 of the Code of Criminal Procedure.

14. Learned Counsel for the appellant when faced with the above difficulty has gone to the extent of suggesting that by necessary implication the power to file a charge-sheet flows from some of the powers which have already been discussed under the new Act and that a Customs Officer is entitled to exercise even this power. It is difficult and indeed it would be contrary to all rules of interpretation to spell out any such special power from any of the provisions contained in the new Act. In this view of the matter even though under the new Act a Customs Officer has been invested with many powers which were not to be found in the provisions of the old Act, he cannot be regarded as a police officer within the meaning of Section 25 of the Evidence Act. In two recent decisions of this Court in which the judgments were delivered only on October 18, 1968, i.e., Ramesh Chandra Mehta v. State of West Bengal, Criminal Appeal No. 27 of 1967, (reported in AIR 1970 SC 940) and Dady Adavji Fatakia v. K. K. Ganguli, Asstt. Collector of Customs, Cri. Appeal No. 46 of 1968 (since reported in AIR 1970 SC 940) the view expressed in Barkat Ram's case, (1962) 3 SCR 338 = (AIR 1962 SC 276) with reference to the old Act has been reaffirmed on the question under consideration and it has been held that under the new Act also the position remains the same. This is what has been said in Dady Adavji Fatakia's case, Cri. Appeal No. 46 of 1968 (reported in AIR 1970 SC 940):

"For reasons set out in the judgment in Cri. Appl. No. 27 of 1967 = (reported in AIR 1970 SC 940) and the judgment of this Court in Badku Joti Savant's case, (1966) 3 SCR 698 = (AIR 1966 SC 1746) we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act."

This appeal fails and it is dismissed.

Appeal dismissed.