Balkishan A. Devidayal

Vs

State of Maharashtra

Criminal Appeals Nos. 208-209 of 1974

State of Madhya Pradesh and Another

Vs

Hari and Others

Special Leave Petition (Criminal) No. 630 of 1977

(CJI Y. V. Chandrachud, P. N. Bhagwati, P. S. Kailasam, A. C. Gupta, N. L. Untwalia JJ)

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

31.07.1980

JUDGMENT

SARKARIA, J. –

These appears by special leave directed against judgments, dated January 17, 1974 and March 29, 1974, of the Bombay High Court, raise, among others, three important questions, namely :

> (1) Whether an officer of the Railway Protection Force, making an inquiry under the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as the "1966 Act"), in respect of an offence under Section 3 of that Act of unlawful possession of the railway property, is a police officer for the purposes of Section 25, Evidence Act and Section 162 of the Code of Criminal Procedure, 1898, and as such, any confession or incriminating statement recorded by him in the course of an inquiry under Section 9 of the Act is inadmissible in evidence.
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> (2) Whether a person arrested by an officer of the Railway Protection Force under Section 6 of the Act for the alleged commission of an offence under Section 3 of the Act, is a "person accused of an offence" within the meaning of Article 20(3) of the Constitution.
>
> (3) Whether Section 9 of the Act is violative of Article 14 of the Constitution.

The appeals arise in these circumstances :

2. The Inspector, Central Intelligence Bureau, Head Quarters, Bombay (Shri P. A. Kakade) filed a complaint before the Presidency Magistrate, 35th Court, Victoria Terminus, Bombay, complaining of the commission of an offence by the appellants, herein, (in Criminal Appeals 208 and 209 of 1974), under Section 3 of the Act. The allegations in the complaint, as summarised in the judgment

of the High Court in Criminal Revision Application No. 821 of 1973, are as under :

3. On November 21, 1970, the Assistant Security Officer, Central Railway, Bhusawal intimated to the Chief Security Officer, Bombay V.T. that two wagons Nos. ERKC-9447 Ex. HSPG BNDN to Akola and wagon No. ERKC 75531 Ex. were unloaded by Unloading Foreman, one B. D. Raverkar of Akola Goods Shed. Seventy-nine M.S. plates (mild steel plates) were unloaded from wagon No. ERKC 75531. On November 14, 1970, one Ram Singh who was having R.R. No. 982859, invoice No. 3 for 78 M.S. plates and invoice No. 2 R.R. No. 892857 for 60 M.S. plates signed the Rs. and endorsed the same on M/s. Vallabhaji Brothers, Clearing Agents at Akola Goods Shed for taking the delivery. Clerk Onkar of the said firm was sent to take delivery. He took delivery of 78 plates from one B. J. Meshram, after Paying the necessary railway dues of Rs. 1,813.80 p., and the 78 plates were removed by the said party in lorries. The delivery of the second consignment of 60 M. S. plates was taken on November 16, 1970 after paying the railway dues of Rs. 2,247.40 p. The said Ram Singh posed as a proprietor of Modern Industries which was found to be a fictitious firm, which never existed. The Deputy Commercial Superintendent, Bhusawal, on November 19, 1970, informed all concerned that the delivery from these wagons was obtained on fraudulent railway receipts.

4. The inquiry into this case was entrusted to the Complainant Inspector, P. A. Kakade, who is an officer of the Railway Protection Force. In the course of that inquiry, the statements of certain persons, including that of Balkishan, appellant herein, were recorded by the said Inspector.

5. On January 31, 1971, while inquiring into another case of Wadi Bunder in which Balkishan was involved, the Inspector recorded the confessional statement of Balkishan, appellant, herein. After making that confessional statement, Balkishan is said to have led Inspector Kakade, in the presence of Panchas, to Tulsiram Gupta Mills Estate Compound, wherefrom 35 M.S. plates were recovered. The Inspector further discovered that the M.S. plates were shifted from Devi Dayal's Compound to Mittal Estate, Kurla-Andheri Road, Marol Naka and they were transported from there for Devi Dayal's Estates. He recorded the statement of Tukaram, the owner of one of these motor trucks on February 7, 1971. Tukaram stated that his lorry was engaged on November 1, 1971, by the appellant.

6. In the meantime, investigation regarding the offences of forgery and cheating was being done at Akola by the concerned Police sub-Inspector, who was directed to suspend his inquiry till further orders were received by him.

7. In the complaint Inspector Kakade stated that accused 2 and 3 are absconding. Annexed to the complaint was a list of prosecution witnesses numbering, in all, 40 and a list of documents numbering 62.

8. The appellant (accused 1) appeared before the Presidency Magistrate. He was then supplied the list of prosecution witnesses and the list of documents to be relied upon by the prosecution. The list of documents included the list of statements of various persons recorded by the Inspector of the Railway Protection Force. The Presidency Magistrate commenced an inquiry and recorded the statements of four witnesses, of one on March 2, 1973 and of the other three on June 12, 1973.

9. On June 11, 1973 an application was filed by the appellant to the magistrate, making a grievance that although three witnesses were being examined, no copies of the documents were furnished to him by the prosecution. On June 25, 1973, the appellant made a further application to the

magistrate, requesting for supply of true copies of all the documents in the case to enable him to prepare his defence. He further prayed that he should be allowed to take photostats of all the documents in the presence of the court officer. The magistrate on August 9, 1973, passed an order rejecting the accused's application, dated June 11, 1973, on the ground that the offence complained of against him was non-cognizable and the provisions of Section 251-A of the Code of Criminal Procedure were not applicable, and consequently, he (accused 1) had no right to obtain copies of the documents concerned. The magistrate further passed an order on August 3, 1973, declining to allow the accused to take photostats of all the documents, on the ground that the documents could not be allowed to be taken outside the court. He, however, added that "if any request to secure the photostat copies in the court comes, it will be considered".

10. On August 24, 1973, the magistrate framed a charge under Section 3(a) of the Act of the effect, that on or after November 14, 1970 the accused was found in possession of M.S. plates numbering about 110, which were the railway property unlawfully possessed by him. The accused pleaded "not guilty" and again made an application repeating his request for copies of the statements of witnesses recorded by Inspector Kakade. He also prayed that he be allowed to inspect all the statements recorded by the prosecution and take copies thereof. The magistrate rejected this application, also, by an order on September 7, 1973.

11. Feeling aggrieved by the orders passed by the magistrate on August 9, 1973 and September 7, 1973, and the framing of the charge against him, the appellant invoked the inherent jurisdiction of the High Court by a petition under Section 561-A of the Code of Criminal Procedure, 1898, and prayed that the said orders be quashed. In this petition, he challenged the constitutional validity of Section 9 of the Act. The petition was heard by a Bench consisting of Vaidya and Gandhi, JJ. The learned Judges answered all the questions, posed above, in the negative. But, on the other aspects of the case, the Assistant Government Pleader, appearing on behalf of the State, stated before the High Court that the prosecution did not desire to keep back any material from the accused and that they would produce copies of statements of all the witnesses and the documents on which the prosecution intends to rely or which the accused to examine. In view of this statement of the Government Pleader, the High Court set aside the order of the magistrate and directed the complainant under Section 165 of the Evidence Act to produce in the trial Court the true copies of the statement of the witnesses already examined and to be examined hereafter by the complainant and of the documents on which the complainant desired to depend. The High Court further declared that the accused and his counsel shall be entitled to inspect those documents and take copies thereof, if necessary, in the court. It further declared that Section 9 of the Act, is not ultra the Constitution.

12. Hence, there appeals by the accused persons.

Question I

13. The first question for consideration is, whether an Inspector of the Railway Protection Force (for short, RPF) is a "police officer", and therefore any confessional statement made to him comes within the prohibition of Section 25, Evidence Act. Section 25 reads thus :

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

14. As explained by this Court in Ariel v. State (Zwinglee Ariel v. State of M. P., AIR 1954 SC 15, 19 : 1954 Cri LJ 230), the policy behind Sections 25 and 26, Evidence Act is to make a substantive

rule of law that confession whenever and wherever made to the police shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible except so far as is provided in Section 27, of that Act. The term "police officer" has not been defined in the Evidence Act.

15. Shri R. K. Garg, appearing for the appellant, submits that the expression "police officer" in Section 25, Evidence Act must be construed in a wide popular sense, so as to include within its ambit all officers of government who are, in substance, invested with the power to investigate certain offences in accordance with the provisions of the Code of Criminal Procedure, 1898 (for short, called the "Code"), irrespective of the fact that they are differently labelled such as, Excise Officers or Customs Officers of members of the RPF; otherwise, the very object of Section 25 will be defeated. In support of this contention, the learned counsel has referred to the decision of this Court in Raja Ram Jaiswal v. State of Bihar (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705). The point pressed into argument is that an Inspector of the RPF making an inquiry under the Railway Property (Unlawful Possession) Act, 1966 into an offence under Section 3 of that Act, in substance, acts and exercises almost all the powers of a "police officer" making an investigation under the Code of Criminal Procedure. If that be the correct position - proceeds the argument - any confessional statement recorded by such Inspector will be hit by Section 25, Evidence Act, and if that statement falls short of a "confession", then also, it will not be admissible in evidence against its maker, at his trial because of the bar in Section 162, Criminal Procedure Code.

16. As against the above, Shri Nain submits that an officer of the RPF while making an inquiry under the 1966 Act cannot be equated with a police officer in charge of a police station making an investigation under the Code. One important difference in their powers is that the RPF Inspector has no power to submit a report or charge-sheet under Section 173 of the Code. Shri Nain has further pointed out that Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) stands on its own peculiar facts, and was distinguished in a later decision by a Constitution Bench of this Court in Badku Joti Savant v. State of Mysore ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353). According to Shri Nain, the correct test for determining whether or not a RPF officer is a "police officer" for the purpose of Section 25, Evidence Act, is one which was consistently applied in State of Punjab v. Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217); Badku Joti Savant ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353); Ramesh Chandra Mehta v. State of West Bengal ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863). To top it all, it is maintained, the question is now no longer res integra and has been concluded by the recent judgment of this Court in State of U. P. v. Durga Prasad ((1975) 1 SCR 881 : (1975) 3 SCC 210 : 1974 SCC (Cri) 828).

17. In reply, Shri R. K. Garg has tried to distinguish Durga Prasad case on the ground, that therein the question whether or not an officer of the RPF is a police within the contemplation of Section 25 of the Evidence Act, was not directly in issue. It is maintained that the only question for decision in that case was : Whether an enquiry conducted under Section 8(1) of the 1966 Act can be deemed to be an investigation for the purpose of Section 162 of the Code of Criminal Procedure, and this question was answered in the negative. In the alternative, it is urged that Durga Prasad case ((1975) 1 SCR 881 : (1975) 3 SCC 210 : 1974 SCC (Cri) 828) was not correctly decided and its ratio needs reconsideration by a larger Bench because it has overlooked the test laid down by the three-Judge Bench in Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705).

18. Although Durga Prasad case ((1975) 1 SCR 881 : (1975) 3 SCC 210 : 1974 SCC (Cri) 828) very largely appears to conclude this question, yet, in deference to the last argument of Shri Garg, we propose to deal with the other decisions of this Court, also, which have been referred to by counsel on both sides.

19. At the outset, for the sake of perspective, we may notice the relevant provisions of the 1966 Act and the Railway Protection Force Act, 1957 (for short called the "1957 Act"). First we will notice the relevant features of the 1957 Act whereunder the RPF was constituted. The preamble of the 1957 Act states that its object is to provide for the constitution and regulation of a Force called the Railway Protection Force for the better protection and security of railway property. The various clauses in Section 2 contain definitions. The definition of "railway property" in clause (e) "includes any goods, money or valuable security, of animal, belonging to, or in the charge or possession of, a railway administration". "Member of the Force" means "a person appointed to the Force under this Act other than a superior officer". In clause (f) "superior officer" means any of the officers appointed under Section 4. Clause (g) says that the words and expressions used but not defined in this Act and defined in the Indian Railways Act, 1890, shall have the meanings respectively assigned to them under that Act. Section 3 gives powers to the Central Government to constitute and maintain the Force. Section 5 enumerates the classes of officers : Inspector/sub-Inspector/Assistant sub-Inspector. Section 10 says that the officers and members of the Force shall be deemed to be "railway servants" within the meaning of the Indian Railways Act, 1890. Section 11 is important. It enumerates that the duty of every superior officer and member of the Force shall be -

> (a) Promptly to execute all orders lawfully issued to him by his superior authority;
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> (b) to protect and safeguard railway property;
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> (c) to remove any obstruction in the movement of railway property; and
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> (d) to do any other act conducive to the better protection and security of railway property.

Section 12 enables any superior officer or member of the Force to arrest, without an order from a magistrate and without a warrant -

> (a) any person who has been concerned in an offence relating to railway property punishable with imprisonment for a term exceeding six months, or against whom a reasonable suspicion exists of his having been so concerned; or
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> (b) any person found taking precautions to conceal his presence within railway limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to, railway property.

Section 13(1) provides :

> Whenever any superior officer, or any member of the Force, not below the rank of a Senior Rakshak, has reason to believe that any such offence as is referred to in Section 12 has been or is being committed and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence, he may detain his and search his person and belongings forth-with and, if he thinks proper, arrest any person whom he has reason to believe

to have committed the offence.

Under sub-section (2), the provisions of the Code, relating to searches under that Code shall, so far as may be, apply to searches under this section. Section 14 indicates the procedure to be followed after arrest. According to it, any superior officer or member of the Force making an arrest under this Act, shall, without necessary delay, make over the person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken to the nearest police station. Section 17 provides penalties for neglect of duty, etc. Section 20 gives protection to a member of the Force for any act done by him in the discharge of his duties. Section 21 gives power to the Central Government to make rules for carrying out the purposes of this Act. Clause (b) of sub-section (2) of this section says that such rules may provide, inter alia, for regulating the powers and duties of superior officers and members of the Force authorized to exercise any functions by or under this Act.

20. From the above survey, it will be seen that the primary object of constituting the Railway Protection Force is to secure better "protection and security of the railway property". The restricted power of arrest and search given to the officers or members of the Force is incidental to the efficient discharge of their basic duty to protect and safeguard railway property. No general power to investigate all cognizable offences relating to railway property, under the criminal procedure, code has been conferred on any superior officer or member of the Force by the 1957 Act. Section 14 itself makes it clear that even with regard to an offence relating to "railway property", the superior officer or member of the Force making an arrest under Section 13 shall forthwith make over the person arrested to a police officer, or cause his production in the nearest police station.

21. Now, we will take up the 1966 Act, which came into force on September 16, 1966. As is evident from its preamble, it is an Act to consolidate and amend the law relating to unlawful possession of railway property. The material part of the Objects and Reasons for moving the Bill which became this Act, is as under :

> 2. At present, offences against railway property are being dealt with under Railway Stores (Unlawful Possession) Act, 1955, but this Act has been found, by experience, to be ineffective in tacking with the enormity of the problems of theft and pilferages on railways. As it is, this Act makes unlawful possession of the railway stores an offence, but it is only applicable to unlawful possession of railway property owned by the railways, and does not cover the offences relating to goods and parcels entrusted to railways for transport.
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> 3. Further, the offences under this Act are investigated and enquired into by local police in accordance with the provisions of the Code of Criminal Procedure, 1898. It has been observed that the two agencies, i.e. the Government Railway Police and Railway Protection Force, which are at present provided to deal with crimes on railways find themselves handicapped, for different reasons, in effectively dealing with the problem of theft and pilferage of railway property. The railways are spread out over a large part of the country and property, etc., entrusted to them is carried from one part to another usually crossing boundaries of different States. The jurisdiction of State Police being restricted to the State boundary only, it becomes difficult at times for the police to make thorough and fruitful investigation into offences relating to railway property. Besides, investigation of cases in respect of railway property also requires a specialised knowledge of railway working. The

> Railway Protection Force, on the other hand, are not at present equipped with requisite powers of investigation and prosecution, with the result that whatever action they take in respect of prevention etc., is taken just in aid of the State Police who conduct investigation and prosecution, etc. Due to this fact of two agencies being responsible for achieving the same object, the machinery has not proved as effective as it ought to have.
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> 4. It is, therefore, proposed to replace the Railway Stores (Unlawful Possession) Act, 1955, by a more comprehensive Act so as to bring within its ambit the unlawful possession of goods entrusted to the railways as common carriers and to make the punishment for such offences more deterrent. It is also proposed to invest powers of investigation and prosecution of offences relating to railway property in the Railway Protection Force in the same manner as in the Excise and Customs.

22. From what has been quoted above, it is clear that the main purpose of passing the 1966 Act was to "invest powers of investigation and prosecution" of offences relating to railway property in the RPF "in the same manner as in the Excise and Customs".

23. We will advert to this point later. Suffice it to say here that in view of the aforesaid object of enacting the 1966 Act, the decisions of this Court on the question as to whether an excise officer customs officer is a "police officer" within the purview of Section 25, Evidence Act, or Section 162, Criminal Procedure Code, assume analogical importance for the purpose of deciding the precise question before us.

24. The various clauses of Section 2 of the 1966 Act, contain definitions. Clause (c) defines "officer of the Force" to mean "an officer of and above the rank of Assistant sub-Inspector appointed to the Force and includes a superior officer". The definition of "railway property" in clause (d) has been expanded so as to include goods entrusted to the railway for carriage or transport, belonging to another person.

25. Section 3 provides :

> Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable -
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> (a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees;
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> (b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and shall not be less than two thousand rupees.

26. It will be seen that if any person is found or proved to be in possession of any "railway property", which is reasonably suspected of having been stolen or unlawful obtained, the burden shall shift on to that person to prove his innocence, that is to say, to establish that he came into possession of the "railway property" lawfully. Section 4 provides punishment for persons wilfully

conniving at an offence under the provisions of this Act.

27. Section 5 says :

> Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable.

28. It may be noted that in spite of provision in the Code of Criminal Procedure to the contrary offences under this Act have been made non-cognizable and, as such, cannot be investigated by a police officer under the Code. It follows that the initiation of prosecution for an offence inquired into under this Act can only be on the basis of a complaint by an officer of RPF and not on the report of a police officer under Section 173(4) of the Criminal Procedure Code, 1898.

29. Section 6 given powers to any superior officer or member of the Force to arrest without an order from a magistrate and without a warrant, any person who has been concerned in an offence punishable under this Act, or against whom a reasonable suspicion existed of his having been so concerned.

30. Section 7 of the Act provides that the procedure for investigation of a cognizable offence has to be followed by the officer before whom the accused person is produced.

31. Reading Section 7 of the 1966 Act with that of Section 14 of the 1957 Act, it is clear that while in the case of a person arrested under Section 12 of the 1957 Act the only course open to the superior officer or member of the Force was to make over the person arrested to a police officer, in the case of a person arrested for a suspected offence under the 1966 Act, he is required to be produced without delay before the nearest officer of the Force, who shall obviously be bound [in view of Article 22(1) of the Constitution] to produce him further before the magistrate concerned.

32. Section 8 of the 1966. Act is new. It provides for an inquiry to be made against the arrested persons. According to it, when any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person. It is to be noted that such power of inquiry, has been conferred on an officer of the Force, although he is not an officer-in-charge of a police station as envisaged by Section 173 of the Code of Criminal Procedure, 1898. Sub-section (2) of this Section confers on the officer of the Force "the same powers" for the purpose of the inquiry under sub-section (1) and subject to the same provisions "as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 when investigating a cognizable case". Then there is a proviso which says :

> Provided that -
>
> (a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a magistrate having jurisdiction in the case, or forward him in custody to such magistrate;
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> (b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the magistrate having

> jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

Section 9 gives powers to an officer of the Force to summon persons to give evidence and produce documents, or any other in any inquiry for any of the purposes of this Act. Sub-sections (3) and (4) provide :

> (3) All persons, so summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required :
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> Provided that the exemption under Sections 132 and 133 of the Code of Civil Procedure, 1908, shall be applicable to requisitions for attendance under this section.
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> (4) Every such inquiry as aforesaid, shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code.

Section 10 enables an officer of the Force having reason for the requisite belief, to apply for a search warrant to the magistrate. Section 11 provides that searches and arrests shall be in accordance with the provisions of the Code.

33. Section 14 makes it clear that the provisions of the Act shall override all other laws. This means that if there is anything in the 1966 Act which is inconsistent with the Code, then on that point, the 1966 Act will prevail and the application of the Code pro tanto will be excluded. The most important example of such exclusion, as already noticed, is to be found in Section 5 of the 1966 Act which makes an offence under this Act non-cognizable, notwithstanding anything in the Code. This clearly shows that the provisions of the Code cannot proprio vigore apply to an inquiry conducted under Section 8(1) of the 1966 Act by an officer of the Force. Further, Section 6 of the 1966 Act empowers an officer or member of the Force to arrest without a warrant and without an order of the magistrate any person concerned, or reasonably suspected of being concerned in an offence under the 1966 Act. This again is contrary to the scheme and content of the Code which must give way to the 1966 Act in this matter.

34. The third material aspect in which an inquiry under the 1966 Act, differs from investigation under the Code, is to the found in Section 9(3) whereunder persons summoned to appear in the inquiry are expressly mandated to state the truth. In contrast with this, Section 160 of the Code done not expressly bind persons examined in a police investigation, to state the truth. The inquiry under Section 8(1) of the 1966 Act in view of Section 9(4) shall be deemed to be a judicial proceeding for the purpose of Sections 193 and 228 of the Penal Code. But a police investigation under Section 160 of the Code does not partake of the character of a judicial proceeding for any purpose and a witness examined during such investigation cannot be prosecuted under Section 193, Penal Code.

35. The fourth important aspect in which the power and duty of an officer of the RPF conducting an inquiry under the 1966 Act, differs from a police investigation under the Code, is this. Sub-section (3) of Section 161 of the Code says that the police officer may reduce into writing any statement made to him in the course of investigation. Section 162(1), which is to be read in continuation of Section 161 of the Code, prohibits the obtaining of signature of the person on his statement recorded

by the investigating officer. But no such prohibition attaches to statements recorded in the course of an inquiry under the 1966 Act; rather, from the obligation to state the truth under pain of prosecution, enjoined by Section 9(3) and (4), it follows as a corollary, that the officer conducting the inquiry may obtain signature of the person who made the statement.

36. Fifthly, under the proviso to sub-section (1) of Section 162 of the Code, oral or recorded statement made to a police officer during investigation may be used by the accused and with the permission of the court by the prosecution to contradict the statement made by the witness in court in the manner provided in Section 145, Evidence Act, or when the witness's statement is so used in cross-examination, he may be re-examined if any explanation is necessary. The statement of a witness made to a police officer during investigation cannot be used for any other purpose, whatever, except of course when it falls within Section 32 or 27 of the Evidence Act. The prohibition contained in Section 162 extends to all statements, confessional or otherwise, during a police investigation made by any person whether accused or not, whether reduced to writing or not, subject to the proviso. In contrast with the code, in the 1966 Act, there is no provision analogous to the proviso to Section 162(1) of the Code, which restricts or prohibits the use of a statement recorded by an officer in the course of an inquiry under Sections 8 and 9 of the Act.

37. Sixthly, the primary duty of a member/officer of the RPF is to safeguard and protect railway property. Only such powers of arrest and inquiry have been conferred by the 1966 Act on members of the RPF as are necessary and incidental to the efficient and effective discharge of the basic duty of watch and ward. Unlike a police officer who has a general power under the Code to investigate all cognizable cases the power of an officer of the RPF to make an inquiry is restricted to offences under the 1966 Act.

38. Last but not the least, under Section 190 of the Code, a magistrate is empowered to take cognizance of an offence only in three ways, namely,

> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a report in writing of such facts made by any police officer;
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> (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

The "report" mentioned in clause (b), includes the report made by a police officer under Section 173 after completing investigation under Chapter XIV of the Code. Section 173, in terms, makes it clear that the duty of making a report thereunder on completion of the investigation to the magistrate, is that of the officer in charge of the police station. Such a report shall include the opinion of the police officer as to the result of the investigation. The formation of such opinion is the final step in the investigation and that final step is to be taken by the police in charge of the station and by no other authority (Abhinandan Jha v. Dinesh Mishra ((1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97)). An officer of the RPF making an inquiry under the 1966 Act, cannot, by any stretch of imagination, be called an "officer in charge of a police station" within the meaning of Sections 173 and 190(b) of the Code. The mode of initiating prosecution by submitting a report under Section 173 read with clause (b) of Section 190 of the Code is, therefore, not available to an officer of the RPF who has completed an inquiry into an offence under the 1966 Act. The only mode of initiating prosecution of the person against whom he has successfully completed the inquiry, available to an officer of the RPF, is by making a complaint under Section 190(1)(a) of the Code to the magistrate

empowered to try the offence. That an officer of the Force conducting an inquiry under Section 8(1) cannot initiate proceedings in court by a report under Sections 173/190(1)(b) of the Code, is also evident from the provisos to sub-section (2) of Section 8 of the 1966 Act. Under proviso (a), if such officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he shall either direct him (after admitting him to bail) to appear before the magistrate having jurisdiction or forward him in custody to such magistrate. Under proviso (b), if it appears to the officer that there is no sufficient evidence or reasonable ground of suspicion against the accused, he shall release him on bond to appear before the magistrate concerned "and shall make a full report of all the particulars of the case to his superior officer". Provisos (a) and (b) put it beyond doubt that where after completing an inquiry, the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he must initiate prosecution of the accused by making a complaint under Section 190(1)(a) of the Code to the magistrate competent to try the case.

39. From the comparative study of the relevant provisions of the 1966 Act and the Code, it is abundantly clear that an officer of the RPF making an inquiry under Section 8(1) of the 1966 Act does not possess several important attributes of an officer in charge of a police station conducting an investigation under Chapter XIV of the Code. The character of the "inquiry" is different from that of an "investigation" under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code.

40. The ground is now clear for noting the rulings cited at the Bar. In State of Punjab v. Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217), the question was whether a Customs Officer can be regarded as a "police officer" within the purview of Section 25, Evidence Act. This decision was rendered by a Bench of three learned Judges. The judgment of the court was delivered by majority (consisting of Raghubar Dayal and J. L. Kapur, JJ.). Subba Rao, J. (as he then was) wrote a dissenting opinion. The view taken by the court (majority) was to the effect :

> That the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order. Although the expression "police officer" has to be construed in a wide and popular sense, yet it has not so wide a meaning as to included officers interested in the duty of detecting and preventing smuggling and similar offences with the object of safeguarding the levying and recovery of customs duties. He is more concerned with the goods and customs duty than with the offender. The duties of customs officers are very much different from those of police officers and that their possessing certain powers, which may have similarity with those to police officers, for the purpose of detecting the smuggling of goods and the persons responsible for it, would not make them police officers. Merely because similar powers in regard to the detection of infractions of customs laws have been conferred on officers of the police is not a sufficient ground for holding them to be police officers within the purview of Section 25 of the Evidence Act. The customs officers, when they act under the Sea Customs Act to prevent the smuggling of goods by imposing confiscation and penalties, act judicially. The police officers never act judicially. Hence, a customs officer either under the Land Customs Act, 1924, or under the Sea Customs Act, 1878, is not a police officer for the purpose of Section 25, Evidence Act.

41. In his dissenting opinion, Subba Rao, J., held that Section 25, Evidence Act was enacted to

subserve a high purpose and that is to prevent the police from obtaining confession by force, torture or inducement. The salutary principle underlying the section would apply equally to other officers, by whatever designation they may be known, who have the power and duty to detect and investigate into crimes and is for that purpose in a position to extract confessions from the accused. It is not the garb or the designation under which the officer functions that matters, but the nature of the power he exercises or the character of the function he performs, is decisive. The question therefore, in each case is, does the officer under a particular Act substantially exercise the powers and discharge the duties of prevention and detection of crime ? If he does, he will be a police officer. The learned Judge quoted with approval the view of Balakrishna Ayyar, J. in Paramasivam case (Public Prosecutor v. C. Paramasivam, AIR 1953 Mad 917, 918 : 1953 Cri LJ 1693 : (1953) 2 MLJ 189) that if the officer's powers and duties are substantially those of a police officer, but are confined to a particular extent of territory or to a particular subject-matter he will be a police officer only in respect of that territory or that subject-matter. On this reasoning, Subba Rao, J. held that a customs officer is a police officer qua his police functions.

42. The next case is Raja Ram Jaiswal (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) decided by a three-Judge Bench. There, the question was, whether an Excise Officer exercising the power of investigation under the Bihar and Orissa Excise Act, 1915, is a "police officer" within meaning of Section 25, Evidence Act. Mudholkar, J., speaking for himself and Subba Rao, J., answered this question in the affirmative. What the majority held in that case may be summed up as under :

> 43. The test for determining whether a person is a "police officer" for the purpose of Section 25, Evidence Act would 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 Section 25, Evidence Act, that is, the recording of a confession. In other words, whether the powers conferred on the excise officer under the Act are such as would tend to facilitate the obtaining by him of a confession from a suspect 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. It was further held that unlike the customs officer on whom are conferred by the Sea Customs Act, 1878, powers of a limited character, which are analogous to those conferred on police officers, are not by themselves sufficient to facilitate the obtaining by him of a confession. 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 Section 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 Section 25. Hence, a confession made by an accused under the Bihar and Orissa Act, recorded by an Excise Inspector who is empowered to investigate any offence under the Act, is inadmissible any reasons of the provisions of Section 25 of the Evidence Act.

44. Raghubar Dayal, J., however, expressed a contrary opinion. He held that the Excise Inspectors empowered by the State Government under Section 77(2) of the Bihar Act, are not "police officers" within the meaning of Section 25 of the Evidence Act and that the aforesaid officers cannot be treated to be police officers for the purposes of Section 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 Section 162 of the Code to any statements made by a person to an excise officer during the course of his investigating an offence under the Act.

45. Although in Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705), the majority judgment distinguished the earlier decision in Barkat Ram case ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217) on the ground that therein, the question whether officers of departments other than the police on whom powers of an officer in charge of a police station under Chapter XIV of the Code of Criminal Procedure are conferred are police officers or not for the purpose of Section 25, Evidence Act, was left open and undecided, yet the fact remains that some of the criteria adopted by the majority in Barkat Ram case ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217) in arriving at the decision they did in a customs officer's case, was rejected and the test indicated by Subba Rao, J., in his minority judgment was substantially approved.

46. Be that as it may, on facts, the distinguishing feature of Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 Sc 828 : (1964) 1 Cri LJ 705) was that under the Bihar Excise Act, the powers of an officer-in-charge of a police station were expressly conferred on the excise officer concerned in respect of the area to which he was appointed.

47. The question whether a Deputy Superintendent of Customs and Excise was a "police officer" within the meaning of Section 25, Evidence Act, again came up for consideration before a Constitution Bench in Badku Joti Savant case ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353). Wanchoo, J., who delivered the unanimous opinion of the Bench, answered this question (at p. 701), thus :

> There has been difference of opinion among the High Courts in India as to the meaning of the words "police officer" used in Section 25 of the Evidence Act. One view has been that those words must be construed in a broad way and all officers whether they are police officers properly so called or not would be police officers within the meaning of those words if they have all the powers of a police officer with respect to investigation of offences with which they are concerned. The leading case in support of this view is Nanoo Sheikh Ahmed v. Emperor (1927 ILR 51 Bom 78 : AIR 1927 Bom 4 : 28 Cri LJ 122). (This view was approved by Subba Rao, J. in his minority judgment in Barkat Ram case ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217)). The other view which may be called the narrow view is that the words "police officer" in Section 25 of the Evidence Act mean a police officer properly so called and do not include officers of other departments of government who may be charged with the duty to investigate under special Acts special crimes thereunder like excise offences or customs offences, and so on. The leading case in support of this view is Radha Kishun Marwari v. King-Emperor (1933 ILR 12 Pat 46 : AIR 1932 Pat 293 : 34 Cri LJ 1). The other High Courts have followed one view or

> the other, the majority being in favour of the view taken by the Bombay High Court . . . . We shall proceed on the assumption that the broad view may be accepted and that requires an examination of the various provisions of the Act to which we turn now .... (After examining some provision of the Central Act 1 of 1944, the judgment proceeded.)

It is urged that under sub-section (2) of Section 21 Central Excise Officer under the Act has all the powers of an officer-in-charge of a police station under Chapter XIV of the Code of Criminal Procedure and therefore he must be deemed to be a police officer within the meaning of those words in Section 25 of the Evidence Act. It is true that sub-section (2) confers on the Central Excise Officer under the Act the same powers as an officer-in-charge of a police station has when investigating a cognizable case; but this power is conferred for the purpose of sub-section (1) which gives powers to a Central Excise Officer to whom any arrested person is forwarded to inquire into the charge against him. Thus under Section 21 it is the duty of the Central Excise Officer to whom an arrested person is forwarded to inquire into the charge made against such person. Further under proviso (a) to sub-section (2) of Section 21 if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a magistrate having jurisdiction in the case, or forward him in custody to such magistrate. It does not however appear that a Central Excise Officer under the Act the power to submit a charge-sheet under Section 173 of the Code of Criminal Procedure. Under Section 190 of the Code of Criminal Procedure, a magistrate can take cognizance of any offence either (a) upon receiving a complaint of facts which constitute such offence, or (b) upon a report in writing of such facts made by any police officer, or (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. A police officer for purposes of clause (b) above can in our opinion only be a police officer properly so called as the scheme of the Code of Criminal Procedure shows and it seems therefore that a Central Excise Officer will have to make a complaint under clause (a) above if he wants the magistrate to take cognizance of an offence, for example, under Section 9 of the Act. Thus though under sub-section (2) of Section 21 the Central Excise Officer under the Act has the powers of an officer-in-charge of a police station when investigating a cognizable case that is for the purpose of his inquiry under sub-section (1) of Section 21.

48. The court then distinguished Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705), thus :

> Section 21 (of the Central Excises and Salt Act, 1944) is in terms different from Section 78(3) of the Bihar and Orissa Excise Act, 1915, which came to be considered in Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705), and which provided in terms that "for the purposes of Sections 156 of the Code of Criminal Procedure, 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, therefore, cannot be said that the provision in Section 21 is on par with the provision in Section 78(3) of the Bihar and Orissa Excise Act. All that Section 21 provides is that for the purpose of his inquiry, 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.

49. On the above reasoning, the court concluded that "mere conferment of powers of investigation into criminal offence under Section 9 of the Act does not make the Central Excise Officer a police officer even in the broader view mentioned above".

50. Following the decisions in Punjab State v. Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217) and Badku Joti Savant v. Mysore State ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353), a Constitution Bench of this Court, in Ramesh Chandra v. State of West Bengal ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863), reiterated that the test for determining whether an officer of customs is to be deemed a police officer is whether he is invested with all the powers of a police officer qua investigation of an offence, including the power to submit a report under Section 173, Code of Criminal Procedure. Applying this test, the court held that since a customs officer exercising power to make an inquiry cannot submit a report under Section 173 of the Code, he is not a police officer within the meaning of Section 25 of the Evidence Act.

51. Again, in Illias v. Collector of Customs (AIR 1970 SC 1065 : (1969) 2 SCR 613), this Court held that although a customs officer under the Customs Act, 1962, has been invested with many of the powers, similar to those exercisable by a police officer under Chapter XIV of the Code - Which he did not have under the old Act - yet he is not empowered to file a charge-sheet under Section 173 of the Code, and therefore, he cannot be regarded as a "police officer" within the meaning of Section 25, Evidence Act.

52. Shri Garg tried to distinguish these cases on the ground that they relate to customs officers or excise officers whose primary duties are to collect and prevent evasion of revenue, and that some of the powers of a police officer are conferred on them merely for the effective discharge of their duties as revenue officers. It is submitted that the members of the RPF are not revenue officers and their duties are confined to the protection of railway property and prevention, detection and investigation of crimes relating to "railway property". Relying on the decision in Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705), it is urged that the real test to be applied for determining this question is, whether the police powers conferred on an officer of the RPF are such as would tend to tempt or facilitate the obtaining by him a confession from a person suspected of the commission of an offence under the 1966 Act. It is argued that since an officer of the RPF conducting an inquiry has been invested qua "railway property" with almost all the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code, this test is amply satisfied to hold that he is a "police officer" within the meaning of Section 25 of the Evidence Act. At one stage, it was contended by Shri Garg that it could be spelled out from Section 8(2) of the 1966 Act that an officer of the Force had the power to present a charge-sheet under Section 173 of the Code, also. In the alternative, it was submitted that the mere fact that an officer of the Force could initiate prosecution only by filing a complaint and not by making a report under Section 173 of the Code, was immaterial in regard to the satisfaction of the test, if, in fact, he had been invested with all other powers of investigation exercisable by a police officer under the Code, qua offences under the 1966 Act.

53. Prima facie there is much to be said for the reasoning advanced by the learned counsel for the appellant, but as a matter of judicial discipline we cannot deviate from the ratio of Punjab State v. Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217), and Badku Joti Savant case ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353), and the primary test enunciated therein for determining this question. Indeed, we are bound by the decision in State of U. P. v.

Durga Prasad ((1975) 1 SCR 881 : (1975) 3 SCC 210 : 1974 SCC (Cri) 828) which, following the ratio of the aforesaid cases, has held that an officer of the RPF conducting an inquiry under Section 8(1) of the 1966 Act, cannot be equated with an officer in charge of a police station, making an investigation under Chapter XIV of the Code.

54. It may be recalled that the primary test evolved in Badku Joti Savant case ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) by the Constitution Bench, is : Whether the officer concerned under the special Act, has been invested with all the powers exercisable by an officer in charge of a police station under Chapter XIV of the Code, qua investigation of offences under that Act, including the power to initiate prosecution by submitting a report (charge-sheet) under Section 173 of the Code. In order to bring him within the purview of a "police officer" for the purpose of Section 25, Evidence Act, it is not enough to show that he exercises some or even many of the powers of a police officer conducting an investigation under the Code.

55. Nor is the ratio of the aforesaid decisions inapplicable merely because they related to a customs officer or an excise officer; and not to an officer of the RPF. The factual premises on which the ratio of Badku Joti Savant ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) rests were substantially analogous to those of the instant case. That is to say, the powers of arrest, inquiry and investigation conferred on the Central Excise Officers under Act 1 of 1944 (which was under consideration in that case) are very similar to those with which an officer for the RPF is invested under the 1966 Act. Under Section 13 of that Act of 1944, any Central Excise Officer duly empowered by the Central Government in this behalf can arrest any person whom he has reason to believe to be liable to punishment. Section 18 provides that all searches made under that Act or any rules made thereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898. Section 19 of that Act lays down that every person arrested under the Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send person so arrested to a magistrate, or if there is no such Central Excise Officer within a reasonable distance, to the officer in charge of the nearest police station. Section 21 of the Act provides :

> (1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.
>
> (2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case.

It will be seen that these provisions in Sections 13, 18, 19 and 21 of the Central Act 1 of 1944, substantially correspond to the provisions in Sections 6, 7, 8 etc. of the 1966 Act, which we have already noticed. It will bear repetition that sub-section (2) of Section 8, under which an officer of the Force conducting an inquiry may exercise the same powers as an officer in charge of a police station investigating a cognizable case under the Code, is in pari materia with sub-section (2) of Section 21 of Act 1 of 1944.

56. It may be recalled that in the Objects and Reasons of the Bill, which was enacted as 1966 Act, it was stated that this measure invests "powers of investigation and prosecution of offences relating to railway property in the Railway Protection Force in the same manner as in the Excise and Customs". The 1966 Act thus brings the status of officers of the RPF in the matter of inquiry, investigation and

prosecution of offences under the Act substantially at par with that of an Excise under the Central Act 1 of 1944 and that of Customs Officer under the Customs Act, 1962. The ratio of all the decisions noticed earlier, therefore, applies in full force to the case of an officer of the RPF making an inquiry into an offence under the 1966 Act.

57. In State of U. P. v. Durga Prasad ((1975) 1 SCR 881 : (1975) 3 SCC 210 : 1974 SCC (Cri) 828), after carefully examining and comparing the powers of arrest, inquiry and investigation of an officer of the Force under the 1966 Act with those of a police officer under the Code, in was pointed out that such an officer of the RPF does not possess all the attributes of an officer in charge of a police station investigating a case under Chapter XIV of the Code. He possesses but a part of those attributes limited to the purpose of holding the inquiry under the Act. On these premises, it was held that an officer of the RPF making an inquiry under the 1966 Act, cannot be equated with an investigating police officer. In reaching this conclusion, Chandrachud, J. (as he then was), speaking for the court, appears to have applied the same test which was adopted in Badku Joti Savant case ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) observed :

> The right and duty of an investigating officer to file a police report or a charge-sheet on the conclusion of investigation is the hallmark of an investigation under the Code. Section 173(1)(a) of the Code provides that as soon as the investigation is completed the officer in charge of the police station shall forward to a magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. The officer conducting an inquiry under Section 8(1) cannot initiate court proceedings by filing a police report . . . .
>
> The decision in Raja Ram Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705), on which Shri Garg relies, was distinguished, as was done in Badku Joti Savant case ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353), on the ground that Jaiswal case (Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) involved the interpretation of Section 78(3) of the Bihar and Orissa Excise Act, 1915.

58. In the light of the above discussion, it is clear that an officer of the RPF conducting an inquiry under Section 8(1) of the 1966 Act has not been invested with all the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code. Particularly, he has no power to initiate prosecution by filing a charge-sheet before the magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating "police officer". Thus, judged by the test laid down in Badku Joti Savant ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353), which has been consistently adopted in the subsequent decisions noticed above, Inspector Kakade of the RPF could not be deemed to be a "police officer" within the meaning of Section 25 of the Evidence Act, and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section.

59. This takes us to the second question.

Question II

60. The main contention of Shri Garg is that any confessional or incriminating statements recorded by an officer of the Force in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be

used as evidence against the appellant in view of the constitutional ban against "compelled testimony" imposed by Article 20(3) of the Constitution. The argument is that as soon as a person is arrested by an officer of the Force on a suspicion or charge of committing an offence punishable under the 1966 Act, he stands in the character of a "person accused of an offence".

61. That being the case - proceeds the argument - a statement made by such an accused person to an officer of the RPF making an inquiry against him can never be said to be voluntary, being subject to a legal compulsion under Section 9(3) of the 1966 Act to state the truth upon any subject respecting which he is examined even if such statement might incriminate him. On these premises it is maintained that both the conditions necessary for attraction of the ban in Article 20(3) of the Constitution exist in the case of such statements.

62. In this connection, Shri Garg has referred to the dissenting judgment of Subba Rao, J. in Barkat Ram ((1962) 3 SCR 338 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217); Kathi Raning Rawat v. State of Saurashtra (1952 SCR 435 : AIR 1952 SC 123 : 1952 Cri LJ 805); K. Joseph Augusthi v. M. A. Narayanan ((1964) 7 SCR 137 : AIR 1964 SC 1552 : (1963) 34 Com Cas 546) Mohamed Dastagir v. State of Madras ((1960) 3 SCR 116 : AIR 1960 SC 756 : 1960 Cri LJ 1159); Bhagwan Das (Bhagwan Das Goenka v. Union of India, Crl. As. 131-132 of 1961, decided on September 20, 1963); Ramanlal Bhogilal Shah v. D. K. Guha ((1973) 3 SCR 438 : (1973) 1 SCC 696 : 1973 SCC (Cri) 583); M. P. Sharma v. Satish Chandra (1954 SCR 1077 : AIR 1954 SC 300 : 1954 Cri LJ 865); Nandini Satpathy v. P. L. Dani (AIR 1978 SC 1025 : (1978) 2 SCC 424 : 1978 SCC (Cri) 236); and In re The Special Courts Bill (AIR 1979 SC 478 : (1979) 1 SCC 380).

63. As against this, Mr. Nain, appearing for the respondent-State, submits that the conditions necessary for the attraction of the ban in Article 20(3) do not exist in the instant case, because before the filing of the complaint in the court, the appellant was not a "person accused of an offence". It is further urged that the compulsion contemplated by clause (3) of Article 20 means "physical or mental compulsion" and not compulsion of law to state the truth; that freedom to tell lies is not within the protection of this clause. It was nowhere alleged that the confessional or incriminating statements in question were extorted by the RPF Officer under physical duress, threat, inducement or mental torture. It is added that in any case, it is a question of fact to be established by evidence that any such compulsion was used in obtaining the incriminating statements.

64. Clause (3) of Article 20 of the Constitution reads, thus :

> No person accused of any offence shall be compelled to be a witness against himself.

An analysis of this clause shows three things : Firstly, its protection is available only to a "person accused of any offence". Secondly, the protection is against compulsion "to be a witness". Thirdly, this protection avails "against himself".

65. It follows that if any of these ingredients does not exist, this clause (3), will not be attracted. Keeping this is in mind, it will be appropriate to concentrate on the first point as to whether during the inquiry under Section 8 of the 1966 Act when the appellant made the incriminating statement in question, he was a "person accused of any offence" within the contemplation of Article 20(3).

66. In M. P. Sharma v. Satish Chandra (1954 SCR 1077 : AIR 1954 SC 300 : 1954 Cri LJ 865) which is a decision by a seven-Judge Bench of this Court, it was held that determination of this issue will depend on whether at the time when the person made the self-incriminatory statement, a formal

accusation of the commission of an offence had been made against him. "Formal accusation" is ordinarily brought into existence by lodging of an FIR or a formal complaint to the appropriate authority or court against the specific individual, accusing him of the commission of a crime which, in the normal course, would result in his prosecution. It is only on the making of such Formal accusation that clause (3) of Article 20 becomes operative covering that individual with its protective umbrella against testimonial compulsion.

67. The interpretation placed by the Court in M. P. Sharma case (1954 SCR 1077 : AIR 1954 SC 300 : 1954 Cri LJ 865), on the phrase "person accused of any offence" used in Article 20(3) was reiterated in Bhagwan Das v. Union of India (Bhagwan Das Goenka v. Union of India, Crl. As. 131-132 of 1961, decided on September 20, 1963). It was reaffirmed in Raja Narayanlal Bansilal v. Maneck Phiroz Mistry ((1961) 1 SCR 417 : AIR 1961 SC 29 : (1960) 30 Com Cas 644).

68. Again, in the State of Bombay v. Kathi Kalu Oghad ((1962) 3 SCR 10 : AIR 1961 SC 1808 : (1961) 2 Cri LJ 856), one of the propositions enunciated by the court was, that to bring a statement within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made. The same proposition was reiterated by Gajendragadkar, C. J. in Joseph Augusthi ((1964) 7 SCR 137 : AIR 1964 SC 1552 : (1963) 34 Com Cas 546), and again by the Constitution Bench in Ramesh Chandra Mehta ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863). In the instant case, at the time when the alleged incriminating statement was made before the officer of the RPF no formal complaint in regard to the commission of an offence, had been filed against him in court, nor had any FIR been lodged with the police specifically accusing the appellant or the author of that statement of the commission of an offence. It is, therefore, manifest that at the material time the author of the self-incriminatory statements in question, did not fulfil the character of a "person accused of an offence" within the meaning of Article 20(3).

69. The last authority to be noticed in regard to the interpretation of the phrase "person accused of any offence", is Ramanlal Bhogilal Shah case ((1973) 3 SCR 438 : (1973) 1 SCC 696 : 1973 SCC (Cri) 583). The petitioner Ramanlal Bhogilal Shah was arrested under Section 19-B of the Foreign Exchange Act. The grounds purportedly served on him under sub-section (1) of Section 19-B for the offence under Section 4(2) and Section 22 of the Act, punishable under Section 23, were elaborate. The question arose whether after these grounds had been served on the petitioner, it could be said that he was a "person accused of an offence" within Article 20(3) of the Constitution. The petitioner was produced before the magistrate, who released him on bail. Thereafter, first information report was recorded under Section 154, Criminal Procedure Code, and an order was obtained from the magistrate, permitting the investigation to be made under Section 155(2), Criminal Procedure Code. The Enforcement Officer had examined the petitioner and put his conclusions in the grounds of arrest which were served on the petitioner. Under these circumstances, the court held that the petitioner was definitely a "person accused of an offence" within the meaning of Article 20(3) of the Constitution and at any rate, the petitioner was accused of an offence when the FIR was recorded and therefore, the summons issued by the Enforcement Directorate would be illegal. At the same time, it was held that although the petitioners is a "person accused of an offence", the only protection that Article 20(3) gave him is that he could not be compelled to be a witness against himself; but this did not mean that he need not give information regarding matters which do not tend to incriminate him. Consequently, the court did not set aside the summons and held that the petitioner was bound to appear before the Enforcement Directorate and answer such questions that did not incriminate him.

70. To sum up, only a person against whom a formal accusation of the commission of an offence has been made can be a person "accused of an offence" within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an FIR or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in court. In the instant case no such formal accusation had been made against the appellant when his statement(s) in question were recorded by the RPF officer.

71. At the relevant time of making the self-incriminatory statements in question, therefore, the appellant did not stand in the character of a person accused of an offence and, as such, the protection of Article 20(3) will not be available to him. In view of this finding, we do not think it necessary for the decision of these appeals to go into the question whether legal compulsion to state the truth such as the one contained in Section 9(3) of the 1966 Act is, also, a compulsion interdicted by Article 20(3).

72. In the light of what has been said above, we would answer the legal proposition (formulated as Question II) propounded by the learned counsel for the appellant, in the negative.

73. Question 3 was not raised or pressed at the time of arguments in the courts below. We, therefore, refuse to go into this question and pronounce in regard thereto.

74. Before we part with this judgment, we may note here that the learned counsel for the respondent-State has very fairly stated at the Bar, that the State shall have no objection to the supply of copies of all the relevant documents and statement on which the prosecution intends to rely, to the accused-appellants in the trial Court. In view of this undertaking we thought it unnecessary to go into the legal aspects of this question. We will however, add that the prosecution shall also permit the accused-appellant to inspect the other material that may have been collected by the inquiry officer, relevant to the charge against the accused-appellant. With this observation, we would dismiss these appeals (208-209 of 1974) and send the case back to the trial Court for further proceedings in accordance with law. Since the case is already old, the proceedings shall be conducted as far as possible, from day-to-day on top-priority basis, and disposed of preferably within three months of the date on which the records are received in the trial Court.

75. Since the legal questions raised before us in Special Leave Petition (Criminal) 630 of 1977 are the same as in Criminal Appeals 208-209 of 1974, and the learned counsel for the petitioners therein has adopted the arguments of Shri R. K. Garg, appearing for the appellant in Criminal Appeals 208-209 of 1974, that special leave petition, after granting special leave to appeal, will also stand disposed of by this judgment.

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