

Raj Kumar Karwal

Vs

Union of India and Others

Kirpal Mohan Virmani

Vs

State and Another

Criminal Appeal No. 449 of 1989

(A. M. Ahmadi, Smt. M. S. Fathima Beevi JJ)

21.03.1990

JUDGMENT

AHMADI, J. -

1. Are the officers of the Department of Revenue Intelligence (DRI) who have been invested with the powers of an officer-in-charge of a police station under Section 53 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act'), "police officers" within meaning of Section 25 of the Evidence Act ? If yes, is a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the said Act, admissible in evidence as against him ? These are the question which we are called upon to answer in these appeals by special leave.

2. These are the facts, briefly stated. A motor truck DEL 3124 was intercepted on July 12, 1986 near Calcutta by the DRI officials. On search a large quantity of hashish weighing about 743 kgs found concealed in machines loaded in the said truck was recovered. The machinery was meant to be exported to Saudi Arabia and the United Kingdom by M/s. Northern Exports (Importers, Exporters and Commission Agents) and M/s. Modern Machinery and Instruments, both of New Delhi. After the hashish was found hidden in the machines loaded in the said vehicle, the same was attached under a seizure memo. Joginder Singh and Shivraj Singh, the drivers of the vehicle, were apprehended on the spot by the DRI officials.

3. The disclosure made by these two drivers led to the search of a farm house at Khasra No. 417, Gadaipur, Mehrauli, New Delhi on July 13, 14 and 15, 1986. In the course of the said search hashish weighing about 976 kgs was recovered from the machines lying in the said premises and a further quantity of 365 kgs was recovered from gunny bags which were secreted underground in the outhouse of the farm house. The DRI officials learnt in the course of investigation that the said hashish was to be exported through M/s. Lee Muirhead (I) Ltd. and M/s. Sheikh and Pandit, of Calcutta. Mohan Lal Pandit and Tushar Pandit, the partners of the said two firms, respectively, were arrested. One Subhash Narang who was arrested by the DRI officials implicated the appellant Kirpal Mohan Virmani. In the course of investigation the name of the other appellant Raj Kumar Karwal also surfaced. Both these persons made confessional statements to the DRI officials in the course of

investigation.

4. On the conclusion of the investigation a complaint was lodged against the said two persons under Sections 21, 23, 29 and 30 of the Act and Section 135-A of the Customs Act, 1962. The appellants now stand committed to the Court of Sessions for trial. On the appellants applying for enlargement on bail under Section 439 of the Code of Criminal Procedure, 1973 ('the Code' hereinafter), the self-incriminating statements made by the appellants to the DRI officials were used against them by the prosecution to establish a prima facie case and to prevent their enlargement on bail. The appellants argued that the said statements were not admissible in evidence in view of Section 25 of the Evidence Act which provides that no confession made to a police officer shall be proved as against a person accused of any offence. The question which arose for consideration was whether DRI officials invested with powers under Section 53 of the Act could be said to be "police officers" within the meaning of Section 25, Evidence Act, so as to place the confessional statements recorded by them beyond the reach of the prosecution. The learned Single Judge of the Delhi High Court before whom the bail applications came up for hearing felt that the question of admissibility of the confessional statement was of vital and far-reaching importance and since it was likely to arise in a number of such cases it was desirable that it be answered by a larger bench. Accordingly the question was referred to a Division Bench which concluded that the officials of the DRI invested with powers under Section 53 of the Act do not possess any of the attributes of an officer-in-charge of a police station conducting an investigation under Chapter XII of the Code. The High Court held that a confessional or self-incriminating statement made by a person accused of having committed a crime under the Act to an officer invested with the power of investigation under Section 53 of the Act was not hit by Section 25 of the Evidence Act. After so answering the question, the learned Judges constituting the Division Bench sent back the matter for disposal in accordance with law to the learned Single Judge. It is against this conclusion reached by the Division Bench of the High Court that the appellants are before us.

5. Section 25 of the Evidence Act reads as under :

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

Thus confession made to a police officer cannot be used or tendered in evidence as against a person accused of any offence. Section 26 next provides that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Section 27, which is in the nature of an exception to Section 25 and 26, provides that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The restrictions on admissibility of a confession of an accused person imposed by Section 25 and 26 of the Evidence Act, when made to a police officer and not in the immediate presence of a Magistrate, is as a matter of public policy designed to prevent the practice of securing confessional statements of persons in police custody by means of threats, inducements, torture, coercion, etc. What impelled the introduction of this provision was the overwhelming evidence which disclosed that the powers vested in the police under the Code were often issued and abused by police officers investigating crimes for extorting a confessional statement from the accused with a view to earning credit for the prompt solution of the crime and/or to secure himself against allegations of supineness or neglect of duty. It was also realised that once a police officer succeeds in extorting a confession from the person accused of the commission of the crime by

threats, inducements, etc. the real offender becomes more or less immune from arrest. Therefore, the purpose of the restriction under Section 25 of the Evidence Act is, broadly speaking, twofold, namely, (i) to protect the person accused of a crime from third degree treatment and, more importantly, (ii) to ensure a proper and scientific investigation of the crime with a view to bringing the real culprit to book.

6. It was, therefore, argued by the counsel for the appellants that the expression "police officer" used in Section 25 must not be read in the narrow sense of only those officers belonging to regular police force but must be construed broadly to include all those who have been invested with powers of the police in the matter of investigation of a penal offence. Since Section 25 engrafts a rule of public policy and is designed to protect a person accused of commission of a crime from third degree treatment or inducements or fraud, counsel argued, confessional statements obtained by such officers exercising police powers, though not belonging to regular police force, should also be excluded from being tendered in evidence against such an accused person. Counsel submitted that since the officers referred to in Section 53 have been invested with all the powers of an officer-in-charge of a police station for investigation of offences under the Act, they have all the attributes of a police officer investigating a crime under Chapter XII of the Code and would, therefore, fall within the expression "police officer" in Section 25 of the Evidence Act. To buttress this submission our attention was invited to Section 2 (xxix) of the Act which says that words and expressions used in the Act but not defined will have the same meaning as is assigned to them in the Code. Since the word 'investigation' is not defined in the Act, counsel submitted, that we must look to Section 2(h) of the Code which defines the said expression to include all proceedings under the Code for the collection of evidence conducted by a police officer. Section 4(2) of the Code next provides that all offences under any other law, i.e. other than the Indian Penal Code, shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It was argued that since the Act does not regulate the manner of investigation, the investigation must be made in accordance with the provisions in that behalf contained in Chapter XII of the Code; it must, therefore, be assumed that the officer investigating the crime under the Act is a "police officer", properly so called, and any confessional statement made to such an officer must be rendered inadmissible in evidence when the maker thereof is accused of having committed an offence. To appreciate the submissions made by counsel for the appellants it is necessary to understand the scheme of the Act.

7. We may at once examine the scheme of the Act. Before the enactment of the Act, statutory control over narcotic drugs was exercised through certain State and Central enactments, principally through the Opium Act, 1856, the Opium Act, 1878, the Dangerous Drugs Act, 1930, etc. However, with the increase in drug abuse and illicit drug traffic certain deficiencies in the existing laws surfaced which made it necessary for Parliament to enact a comprehensive legislation sufficiently stringent to combat the challenge posed by drug traffickers. India had participated in the second International Opium Conference held at Geneva in 1925 which adopted the convention relating to dangerous drugs. To give effect to the obligations undertaken by the Government of India by signing and ratifying the said convention, the Dangerous Drugs Act, 1930 came to be enacted to vest in the Central Government the control over certain operations concerning dangerous drugs. Article 25 of the Universal Declaration of Human Rights, 1948, and Article 12 of the International Covenant on Economical, Social and Cultural Rights, 1966, reflect the concern of the international community for the protection of the individual's right to the enjoyment of the highest attainable standards of physical and mental health. The other International Conventions which prompted the legislation are set out in Section 2(ix) of the Act. Besides, one of the primary duties of the

government under our Constitution is improvement of public health, inter alia, by prohibiting the consumption of intoxicating drinks and drugs injurious to health. The Act was, therefore, enacted, as is evident from its Preamble, inter alia, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and to provide for deterrent punishments, including the forfeiture of property derived from or used in illicit traffic of such drugs and substances.

8. The Act is divided into six chapters accommodating 83 sections. Chapter I contains the short title of the Act, definitions of various terms and expressions used there in and provisions enabling addition to and omission from the list of psychotropic substances. Chapter II entitled 'authorities and officers' empowers the Central as well as the State Governments to make appointments of certain officers, etc. for the purposes of the Act. The newly added Chapter II-A provides for the constitution of a national fund for control of drug abuse. Provision for the prohibition, control and regulation on cultivation, production, manufacture, etc. of any narcotic drug or psychotropic substance is to be found in Chapter III. Chapter IV defines the offences punishable under the Act and prescribes the penalties therefor. Needless to say that the punishments prescribed are very severe. In some cases the minimum punishment is 10 years with fine extending to Rs. 2 lakhs and above. By a recent amendment death penalty is prescribed for certain offences committed by persons after a previous conviction. Provision for rebuttable presumption of mens-reaculpable mental state - is also made under Section 35 and Special Courts are envisaged by Section 36 and 36-A for the trial of offences punishable under the Act. Every offence punishable under the Act is made cognizable by virtue of Section 37, notwithstanding the provisions of the Code. Then comes Chapter V which outlines the procedure to be followed by the officers appointed for the implementation of the various provisions of the Act. Sub-section (1) of Section 41 empowers a Metropolitan Magistrate or a Magistrate of the First Class or a Magistrate of the Second Class, specially empowered, to issue a warrant for the arrest of any person suspected of having committed any offence punishable under the provisions of Chapter IV of the Act and for the search of any premises, conveyance or place in which such person is suspected of having kept or concealed any narcotic drug or psychotropic substance. Sections 41(2), 42, 43 and 44 confer on officers named under the Act the powers of arrest, search and seizure without any order or warrant from the concerned Magistrate. We will refer to these provisions in some detail when we discuss the impact thereof hereafter.

9. Power to stop, rummage and search any conveyance or goods carried in any conveyance or on any animal is conferred by Section 49. Section 51 provides that all warrants issued and arrest, searches and seizures made shall be governed by the provisions of the Code unless such provisions are not consistent with the provisions of the Act.

10. Next comes Section 53 which we consider proper to reproduce at this stage. It reads as under :

"53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station. - (1) The Central Government, after consultation with the State Government may, by notification published in the official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the official Gazette, invest any officer of the department of drugs control, revenue or excise of any class

of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act".

Section 53-A, inserted by Act 2 of 1989, makes a statement made and signed by a person before any officer empowered under Section 53 for investigation of offences, during the course of such investigation, relevant in certain circumstances e.g., when the maker of the statement is dead or cannot be traced or is incapable of giving evidence or is kept away by the opposite party or whose presence cannot be secured without delay or when he is examined as a witness in the case. Section 54 permits raising of a rebuttable presumption against an accused in a trial for any offence under the Act to the extent permitted by clauses (a) to (d) thereof. Section 55 enjoins upon an officer-in-charge of a police station to take charge of and keep in safe custody any article seized under the Act and made over to him. Section 57 enjoins upon the officer making an arrest or effecting seizure under the Act to make a full report thereof to his immediate superior within 48 hours. Section 58 provides the punishment for vexatious entry, search, seizure or arrest. Section 67 empowers an authorised officer to call for information or require any person to produce or deliver any document or thing useful or relevant to the enquiry or examine any person acquainted with the fact and circumstances of the case. The newly added Chapter V-A deals with forfeiture of property derived from and used in illicit traffic of drugs, etc. The last Chapter VI contains miscellaneous provisions.

11. The scheme of the Act clearly shows that the Central Government is charged with the duty to take all such measures as it deems necessary or expedient for preventing and combating the abuse of narcotic drugs [Section 2(xiv)] and psychotropic substances [Section 2(xxiii)] and the menace of illicit traffic [Section 2(viii-a)] therein. As pointed out earlier Chapter IV defines the offences and prescribes the punishments for violating the provisions of the Act. We must immediately concede that the punishments prescribed for the various offences under the Act are very severe e.g. Section 21 and 23 prescribe the punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Section 29 which makes abetment an offence prescribes the punishment provided for the offence abetted while Section 30 prescribes the punishment which is one half of the punishment and fine for the principal offence. In addition thereto certain presumptions, albeit rebuttable, are permitted to be, raised against the accused. Counsel for the appellants, therefore, argued that when such extensive powers are conferred on the officers appointed under the Act and the consequences are so drastic, it is desirable that the protection of Section 25, Evidence Act, should be extended to persons accused of the commission of any crime punishable under the Act. In this connection our attention was drawn to the observations of this Court in *Balbir Singh v. State of Haryana* ((1987) 1 SCC 533 : 1987 SCC (Cri) 193 : JT (1987) 1 SC 210) wherein it is emphasised that when drastic provisions are made by a statute the duty of care on the authorities investigating the crime under such law is greater and the investigation must not only be thorough but also of a very high order. We, therefore, agree that as Section 25, Evidence Act, engrafts a wholesome protection it must not be construed in a narrow and technical sense but must be understood in a broad and popular sense. But at the same time it cannot be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred within the category of police officers. See *State of Punjab v. Barkat Ram* ((1962) 3 SCR 338, 347 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217) and *Raja Jaiswal v. State of Bihar* ((1964) 2 SCR 752, 761 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705). This view has been reiterated in subsequent cases also.

12. The question then is whether the expression "police officer", even if liberally construed, would take in its officers of other departments including the DRI invested with powers under Section 53 of

the Act. According to the view taken by the Bombay High Court in *Nanoo Sheikh Ahmed v. Emperor* (ILR (1927) 51 Bom 78 : AIR 1927 Bom 4) they perhaps would, but not if the view expressed by the Patna High Court in *Radha Kishan Marwari v. Emperor* (ILR (1933) 12 Pat 46 : AIR 1932 Pat 293 (SB) prevails. These two lines of thought have been the subject matter of scrutiny by this Court in a few subsequent cases. We will presently refer to them.

13. In the case of *Barkat Ram* ((1962) 3 SCR 338, 347 : AIR 1962 SC 276 : (1962) 1 Cri LJ 217) this Court was called upon to consider whether Customs Officers to whom confessional statements were made could be said to be police officers within the meaning of Section 25, Evidence Act. On behalf of the prosecution it was argued that the mere fact that certain powers of arrest, search, seizure and recording of evidence have been conferred on such officers, where contravention of the provisions of the statute is complained of, is not sufficient to make them police officers under Section 25 of the Evidence Act. The respondents on the other hand contended that officers on whom such powers are conferred are in fact police officers, no matter by what name they are called. This Court, by majority, pointed out that the primary function of the police under the Police Act, 1861, is prevention and detection of crime while the Customs Officers are mainly interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties, i.e. they are more concerned with the goods and customs duty, than with the offender. After referring to the provisions of the various statutes including Section 5(2) of the old Code [now Section 4 (2)], this Court held at pages 364-65 as under :

"The foregoing consideration of the case law and the statutory provisions yields the following results : The term 'police officer' is not defined in the Evidence Act, or, as a matter of fact, in any other contemporaneous or subsequent enactment. The question, therefore, falls to be decided on a fair construction of the provisions of Section 25 of the Evidence Act, having regard to the history of the legislation and the meaning attributed to that term in and about the time when Section 25 of the Evidence Act came to be inserted therein. If a literal meaning, is given to the term 'police officer' indicating thereby an officer designated as police officer, it will lead to anomalous results. An officer designated as a police officer, even though he does not discharge the well understood police functions, will be hit by Section 25 of the Evidence Act, whereas an officer not so designated but who has all the powers of a police officer would not be hit by that section; with the result, the object of the section would be defeated. The intermediate position, namely, that an officer can be a police officer only if powers and duties pertaining to an officer-in-charge of a police station within the meaning of the Code of Criminal Procedure are entrusted to him, would also lead to an equally anomalous position, for, it would exclude from its operation a case of an officer on whom specific powers and functions are conferred under specific statutes without reference to the Code of Criminal Procedure. The Code of Criminal Procedure does not define a 'police officer' and Section 5(2) thereof makes the procedure prescribed by the Code subject to the procedure that may be prescribed by any specific Act. This construction would make the provisions of Section 25 of the Evidence Act otiose in respect of officers on whom specific and incontrovertible police powers are conferred. But the third position would not only carry out the intention of the legislature, but would also make the section purposive and useful without doing any violence to the language of the section.

A police officer within the meaning of Section 25 of the Evidence Act may be defined thus : An officer, by whatever designation he is called, on whom a statute

substantially confers the powers and imposes the duties of the police is a police officer within the meaning of Section 25 of the Evidence Act."

In the final analysis this Court held that the duties of the Customs Officer were substantially different from those of the police and merely because they possessed certain powers having similarity with those of police officers, cannot make them police officers within the meaning of Section 25 of the Evidence Act.

14. In the case of Raja Ram Jaiswal ((1964) 2 SCR 752, 761 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) the undisputed facts were that a motor car was intercepted by an Excise Inspector and search. On search five bundles of non-duty paid Nepali charas were found and seized. The Excise Inspector recorded the statements of all persons found in the car including the appellant. The admissibility of the appellant's statement, was challenged on the ground that it was hit by Section 25, Evidence Act. This Court, by majority (Raghubar Dayal, J. dissenting), laid down the test in the following words :

"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 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, 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."

Applying this test this Court concluded that the Excise Inspector, who recorded the appellant's confessional statement was in fact a police officer, properly so-called, within the meaning of that expression in Section 25, Evidence Act.

15. Both these decisions came up for consideration before a bench consisting of five learned Judges of this Court in *Badku Joti Savant v. State of Mysore* ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353). In that case the appellants were found in possession of contraband gold when his house was raided and searched in the presence of panchas on November 27, 1960. The appellant was arrested on November 30, 1960 and his statement was reduced to writing and his signature was obtained thereon. In the course of his statement he admitted knowledge about the existence of the contraband goods. Two questions arose for determination, the first related to the interpretation of Section 167 (81) of the Sea Customs Act and the second touched the point of admissibility of the confessional statement in view of Section 25, Evidence Act. This Court distinguished the *Raja Ram Jaiswal* case ((1964) 2 SCR 752, 761 : AIR 1964 SC 828 : (1964) 1 Cri LJ 705) and held that the facts of the case on hand were more in accord with the case of *Barkat Ram*. Accordingly, it held that the Central Excise Officer was not a police officer under Section 25 of the Evidence Act. This Court while dealing with the submission based on Section 21(2) of the Central Excises and Salt Act, 1944, observed that even though his sub-section confers on the Central Excise Officer the same powers as an officer-in-charge of a police station investigating a cognizable case "It does not, however, appear that a Central Excise Officer under the Act has power to submit a charge-sheet under Section 173 of the Code ...." (SCR p. 703) Thus the ratio of the decision appears to be that even if an officer is invested under any special law with powers analogous to those exercised by a police officer in charge of a police station investigating a cognizable offence, he does not thereby become a police officer under Section 25, Evidence Act, unless he has the power to lodge a report under Section 173

of the Code.

16. In *Romesh Chandra Mehta v. State of West Bengal* ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863) a bench of five learned Judges held :

"... 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 of the Code of Criminal Procedure. It is not claimed that a Customs Officer exercising power to make an enquiry may submit a report under Section 173 of the Code of Criminal Procedure".

17. In *Illias v. Collector of Customs, Madras* ((1969) 2 SCR 613 : AIR 1970 SC 1065 : 1970 Cri LJ 998) the same bench was required to consider if Customs Officials under the Customs Act, 1962 were police officers within the meaning of Section 25, Evidence Act. This Court referred to all the cases discussed hereinbefore and finally approved the test laid down in *Badku Joti Savant* ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) and reiterated in *Romesh Chandra Mehta* ((1969) 2 SCR 461 : AIR 1970 SC 940 : 1970 Cri LJ 863).

18. In *State of U. P. v. Durga Prasad* ((1975) 3 SCC 210 : 1974 SCC (Cri) 828 : (1975) 1 SCR 881) the question for consideration was whether an enquiry under Section 8(1) of the Railway Property (Unlawful Possession) Act, 1966, is an investigation under the Code; if yes, whether statements recorded in the course of investigation are hit by Section 162 of the Code and if such statements are confessional in nature can they be admitted in evidence in view of Section 25, Evidence Act. This Court observed at pages 886-87 as under : (SCC p. 216, paras 18 and 19)

"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 as is evident from the two provisos to Section 8(2) of the Act .... On the conclusion of an enquiry under Section 8 (1), therefore, if the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he must file a complaint under Section 190(1)(a) of the Code in order that the Magistrate concerned may take cognizance of the offence.

Thus an officer conducting an inquiry under Section 8(1) of the Act 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".

19. In a more recent case, *Balkishan A. Devidayal v. State of Maharashtra* ((1980) 4 SCC 600 : 1981 SCC (Cri) 62 : (1981) 1 SCR 175) the question which arose for determination was whether an Inspector of the Railway Protection Force enquiring into an offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966, can be said to be a "police officer" under Section 25, Evidence Act. This Court, after a review of the case law, concluded at page 201 as under : (SCC pp.

620-21, para 58)

"In the light of the above discussion, it is clear that an officer of the RPF conducting an enquiry 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) 2 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 ..."

20. Keeping in view the law laid down by this Court in the decisions referred to above, we may now proceed to apply the test in the context of the provisions of the Act. We have noticed that Section 37 makes every offence punishable under the Act cognizable notwithstanding anything contained in the Code. Section 41(1) empowers a Magistrate to issue a warrant for the arrest of any person suspected of having committed any offence under Chapter IV, or for the search of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or any document or other article is kept or concealed. Section 41(2) empowers certain gazetted officers of central excise, narcotics, customs, revenue and intelligence, etc. of the Central Government or the Border Security Force, or any such officer of the revenue, excise, police, drug control, or other departments of the State Governments empowered by general or special orders in this behalf to issue an authorisation for the arrest of any person believed to have committed an offence or for the search of any building, conveyance or place whether by day or by night in which the offending drug or substance or article is kept or concealed. Section 42 enables certain officers duly empowered in this behalf by the Central or the State Governments to enter into and search any building, conveyance or enclosed place between sunrise and sunset without any warrant or authorisation, if there is reason to believe from personal knowledge or information given by any person and reduced to writing, that any narcotic drug or psychotropic substance in respect of which such an offence has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed therein and seize the same. The proviso requires that the concerned officer must record the grounds of his belief before exercising power under the said provision. Sub-section (2) of Section 42 enjoins upon an officer taking down the information or recording grounds for his belief to forward a copy thereof to his immediate superior. Section 43 confers on any officer of any of the departments mentioned in Section 42, power to seize in any public place or in transit, any narcotic drug or psychotropic substance, in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and along therewith any animal or conveyance or article liable to confiscation under the Act and any document or other article which furnishes evidence of the commission of the offence relating to such drug or substance. Power is also conferred on such an officer to detain and search any person who he has reason to believe to have committed an offence under Chapter IV and if such person has any narcotic drug or psychotropic substances in his possession and such possession appears to him unlawful, arrest him, and any other person in his company. By Section 44 the provisions of Section 41, 42 and 43 are made applicable in relation to offences concerning cocoa plant, opium poppy or cannabis plant. Where it is not practicable to seize any goods (including standing crop) liable to confiscation, any officer duly authorised under Section 42 is empowered to serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal

with the goods except with the previous permission of such officer. Section 48 confers on the Magistrate or any officer of the gazetted rank empowered under Section 42, power of attachment of crop illegally cultivated. Section 49 empowers any officer authorised under Section 42, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance in respect of which he suspects that any provision of the Act has been, or is being, or is about to be contravened, to stop such animal or conveyance and rummage and search the conveyance or part thereof; examine and search any goods on the animal or in the conveyance and use all lawful means for stopping it and where such means fail, the animal or conveyance may be fired upon. Section 50 enjoins upon the officer who is about to search any person, if such person so requires, to take him without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. Then comes Section 51 which says that the provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of the Act, to all warrants issued and arrests, searches and seizures made under the Act. On a plain reading of the section it is clear that if there is any inconsistency between the provisions of the Act and the Code, the former will prevail. Section 52 deals with the disposal of persons arrested and articles seized under Section 41, 42, 43 or 44 of the Act. It enjoins upon the officer arresting a person to inform him of the grounds for his arrest. It further provides that every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. Where, however, the arrest or seizure is effected by virtue of Section 41(2), 42, 43 or 44 the section enjoins upon the officer to forward the person arrested and the article seized to the officer-in-charge of the nearest police station or the officer empowered to investigate under Section 53 of the Act. Special provision is made in Section 52-A in regard to the disposal of seized narcotic drugs and psychotropic substances. Then comes Section 53 which we have extracted earlier. Section 55 requires an officer-in-charge of a police station to take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under the Act within the local area of that police station and which may be delivered to him. Section 57 enjoins upon any officer making an arrest or effecting seizure under the Act to make a full report of all the particulars of such arrest or seizure to his immediate official superior within 48 hours next after such arrest or seizure. These provisions found in Chapter V of the Act show that there is nothing in the Act to indicate that all the powers under Chapter XII of the Code, including the power to file a report under Section 173 of the Code have been expressly conferred on officers who are invested with the powers of an officer-in-charge of a police station under Section 53, for the purpose of investigation of offences under the Act.

21. The Act was enacted for the control and regulation of operations relating to narcotic drugs and psychotropic substances. Under Sections 41, 42, 43 44 and 49 of the Act certain powers of arrest, search and seizure have been conferred on certain officers of different departments. If the arrest or seizure is made pursuant to a warrant issued under Section 41(1), the person arrested or the article seized has to be forwarded to the Magistrate with despatch. If the arrest or seizure is made under Section 41 (2), 42, 43 or 44 the person arrested or the article seized has to be forwarded to the officer-in-charge of the nearest police station or the officer empowered under Section 53 of the Act. Special procedure has been prescribed for the disposal of narcotic drugs and psychotropic substances having regard to the factors set out in Section 52-A. The role of the officers effecting arrest or seizure, except in the case of a police officer, ends with the disposal of the person arrested and the article seized in the manner provided by Section 52 and 52-A of the Act. Section 57 obliges the officer making the arrest or seizure to report the same to his superior within 48 hours. These powers are more or less similar to the powers conferred on Customs Officers under the Customs Act, 1962.

22. For the offences under the Act, the investigation is entrusted to officers in whom powers of an

officer-in-charge of a police station are vested by a notification issued under Section 53 of the Act by the concerned government. Thus a special investigating agency is created to investigate the commission of offences under the Act. There is no doubt that the Act creates new offences, empowers officers of certain departments to effect arrest, search and seizure, outlines the procedure therefor, provides for a special machinery to investigate these offences and provides for the constitution of Special Courts for the trial of offences under the Act, notwithstanding anything contained in the Code. But, argued, learned counsel for the appellants, the officers empowered to investigate under Section 53 of the Act must of necessity follow the procedure for investigation under Chapter XII of the Code, since the Act does not lay down its own procedure for investigation. By virtue of Section 51 of the Act, the provisions of the Code would apply since there is no provision in the Act which runs counter to the provisions of the Code. It was said that since the term 'investigation' is not defined by the Act, the definition thereof found in Section 2(h) of the Code must be invoked in view of Section 2(xxix) of the Act which in terms states that words and expressions used in the Act but not defined will carry the meaning assigned to them, if defined in the Code. Section 2(h) of the Code, which defines 'investigation' by an inclusive definition means all proceedings under the Code for collection of evidence conducted by a police officer or by any person authorised by a Magistrate in this behalf. Under Section 4(2) of the Code all offences under any other law have to be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code. However according to Section 5, nothing contained in the Code shall, unless otherwise provided, affect any special or local law or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The power to investigate is to be found in Chapter XII of the Code which begins with Section 154 and ends with Section 176. The scheme of this chapter is that the law can be set in motion in regard to a cognizable offence on receipt of information, written or oral, by the officer-in-charge of a police station. Once such information is received and registered, Section 156 empowers any officer-in-charge of the police station to investigate the same without any magisterial order. The investigation which so commences must be concluded, without unnecessary delay, by the submission of a report under Section 173 of the Code to the concerned Magistrate in the prescribed form. Any person on whom, power to investigate under Chapter XII is conferred can be said to be a 'police officer', no matter by what name he is called. The nomenclature is not important, the content of the power he exercises is the determinative factor. The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet under Section 173 of the Code. That is why this Court has since the decision in *Badku Joti Savant* ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code, including the power to submit a report under Section 173, he can not be described to be a 'police officer' under Section 25, Evidence Act. Counsel for the appellants, however argued that since the Act does not prescribe the procedure for investigation, the officers invested with power under Section 53 of the Act must necessarily resort to the procedure under Chapter XII of the Code which would require them to culminate the investigation by submitting a report under Section 173 of the Code. Attractive though the submission appears at first blush, it can not stand close scrutiny. In the first place as pointed out earlier there is nothing in the provisions of the Act to show that the legislature desired to vest in the officers appointed under Section 53 of the Act, all the powers of Chapter XII, including the power to submit a report under Section 173 of the Code. But the issue is placed beyond the pale of doubt by sub-section (1) of Section 36-A of the Act which begins with a non-obstante clause - notwithstanding anything contained in the Code - and proceeds to say in clause (d) as under :

"36-A. (d) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial."

This clause makes it clear that if the investigation is conducted by the police, it would conclude in a police report but if the investigation is made by an officer of any other department including the DRI, the Special Court would take cognizance of the offence upon a formal complaint made by such authorised officer of the concerned government. Needless to say that such a complaint would have to be under Section 190 of the Code. This clause, in our view, clinches the matter. We must, therefore, negative the contention that an officer appointed under Section 53 of the Act, other than a police officer, is entitled to exercise 'all' the powers under Chapter XII of the Code, including the power to submit a report or charge-sheet under Section 173 of the Code. That being so, the case does not satisfy the ratio of *Badku Joti Savant* ((1966) 3 SCR 698 : AIR 1966 SC 1746 : 1966 Cri LJ 1353) and subsequent decisions referred to earlier.

23. In view of the above discussion we are of the opinion that the view taken by the Delhi High Court in the impugned judgment, which is in accord with the view taken by the Allahabad High Court in *Mahesh v. Union of India* ((1988) 1 FAC 339 (All HC) and the Gujarat High Court in *Mangal Singh Bhan Singh Rathod v. State of Gujarat* ((1988) 2 FAC 173 (Guj HC) is unassailable and must be upheld. We, therefore, see no merit in the appeal as well as the special leave petition and hereby dismiss them.

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