

CALCUTTA HIGH COURT

Amin Shariff

Vs.

Emperor

(Mukerji, J.)

21.02.1934

JUDGMENT

Mukerji, J.

1. On receipt of some information an Excise Inspector with a raiding party went to a certain place and on making a search there seized a bundle which was found to contain seven seers of opium valued at ₹ 1,050/- . He arrested three persons one of whom was one Amin Shariff (appellant in appeal No. 262), and another, one Jahabir Singh (Appellant in appeal No. 379), both of whom have been convicted by the Chief Presidency Magistrate of Calcutta under Section 9, Opium Act (1 of 1878). These two men are said to have made confessions to the Excise Inspector. At the hearing of the appeals which the accused persons have preferred to this Court, a question having arisen as to whether the said confessions are admissible in law, in view of the provisions of Section 25, Evidence Act, the Division Bench which was dealing with the appeals, has made this reference.

2. The question referred runs in these words:

Is an Excise officer, who, in the conduct of investigation of an offence against the Excise, exercises the powers conferred by the Code of Criminal Procedure upon an officer in charge of a Police Station for the investigation of a cognizable offence, a Police Officer within the meaning of Section 25, Evidence Act.

3. So far as this Court is concerned, the following is the state of authority bearing upon the question. In *Rokun Ali v. Emperor*¹ which was a case Under Section 9, Opium Act (1 of 1878), a confession made by the accused to a Superintendent of Excise was admitted against him in evidence, it being held that there was no inducement, threat or promise to shut it out Under Section 24, Evidence Act; but the question whether Section 25 of the said Act applied to the case or not was neither raised nor decided. In *Ah Foong Chinaman v. Emperor*² which also was a case Under Section 9, Opium Act (1 of 1878), a confession made by the accused to an Inspector of Excise was sought to be ruled out on the ground that Excise Officers were in reality Police

Officers, though not called as such ; but the contention was overruled, it being only observed that it was not possible to say that Excise Officers were Police Officers. This last-mentioned decision was followed in *Harbhanjan Sao v. Emperor*³, which was a case Under Section 46, Bengal Excise Act; (5 of 1909). In *Tura Sardar v. Emperor*⁴ which was a case under Sections 46 and 61,

¹ AIE 1918 Cal 138

³ AIR 1927 Cal 527: (1927) ILR 54 Cal 601

² AIE 1919 Cal 696

⁴ AIR 1980 Cal 710

Bengal Excise Act (5 of 1909), a confession made to an Excise Inspector and an Excise Sub-Inspector was held admissible in spite of Section 25, Evidence Act. In that case the argument that an Excise Officer is a Police Officer within the meaning of Section 25, Evidence Act, was overruled on the ground that the question was no longer res integra, having regard to the decisions in the cases of *Rokun Ali v. Emperor*⁵ *Ah Foong Chinaman v. Emperor*⁶ and *Harbhanjan v. Emperor*⁷,

4. A further point raised in that case, namely that in view of the provisions of Section 74, Bengal Excise Act (5 of 1909), a statement made by an accused to an Excise Officer was equally incapable of proof as against him as a statement made Under Section 162, Criminal P. C, to a Police Officer, was not decided as the question did not really arise. It appears further that in that case reliance was placed on behalf of the accused upon the decision of a Full Bench of the Bombay High Court in the case of *Nanoo v. Emperor*⁸, in which it had been held that an Abkari Officer, who in the conduct of an investigation of an offence punishable under the Bombay Abkari Act (Bombay Act 5 of 1878 as amended by Bom. Act 12 of 1912), exercises all the powers conferred by the Code of Criminal Procedure upon an officer in charge of a Police Station for the investigation of a cognizable offence, is a Police Officer within the meaning of Section 25, Evidence Act, and by confession made to such an officer in the course of this investigation under the Abkari Act or the Criminal Procedure Code is inadmissible in evidence. But this decision was not considered applicable, as the Abkari law in Calcutta was different from that in Bombay. In a later decision of this Court in the case of *Ibrahim Ahmed v. Emperor*⁹, which was a case Under Section 9, Opium Act (1 of 1878), as also Under Section 46, Bengal Excise Act (5 of 1909), the view taken in the Bombay Full Bench decision was adopted and it was held that the Bengal Excise Act (5 of 1909) confers police powers on "Excise Officers and they are Police Officers within the meaning of Section 25, Evidence Act." Later on however in the case of *Matilal Kalwar v. Emperor*¹⁰, the view taken in the earlier Calcutta decisions has again been taken and it has been again held that an Excise Officer is not a Police Officer within the meaning of Section 25, Evidence Act.

5. It is apparent therefore that there is a conflict of judicial authority on the question whether an Excise Officer is a Police Officer within the meaning of Section 25, Evidence Act. The question formulated and referred as above stated however does not cover the entire ground of the conflict and, following as it closely does the wording of the question which was referred in the Bombay case above-mentioned, is some what inapposite, because it is clear from a comparison of, the relevant provisions of the Opium Act (1 of 1878), which is the Act to be considered in this connexion, and of the Bengal Excise Act (5 of 1909), the powers of an Excise Officer while

investigating into offences under the said two Acts respectively are not quite the same; the Opium (Bengal) Amendment Act (5 B. C. of 1933) which has been recently enacted to amend the Opium Act (1 of 1878), in its application to Bengal would not apply to this case. In the course of the arguments addressed to us on this reference a much broader question has been submitted for our decision as arising upon the Order of Reference taken along with the facts of these cases. That question is, whether an Excise Officer is a Police Officer within the meaning of

⁵ AIE 1918 Cal 138

⁷ AIR 1927 Cal 527: (1927) ILR 54 Cal 601

⁶ AIE 1919 Cal 696

⁸ AIR 1927 Bom 4: ILR 1927 51 Bom 78

⁹ AIR 1931 Cal 350: (1931)ILR 58 Cal 1260

¹⁰ AIR 1932 Cal 122: 140 Ind. Cas. 257

Section 25, Evidence Act. To answer this question one has necessarily to consider, what is the meaning of the term "Police Officer" as used in Section 25, Evidence Act.

6. The most satisfactory mode of construction, of course, is to examine the statute and if possible, to ascertain the meaning from the statute alone. If the meaning of an expression used in a statute is plain, the intention of the legislature cannot be speculated upon and a Judge is not allowed to modify statutes to suit his own views of justice or expediency. In the present case it is not possible to ascertain the meaning of the term "Police Officer" from the Evidence Act itself, because that Act has not given a definition of the term nor has it given any indication as to what its meaning or import is or in what sense it is to be understood. In such circumstances therefore, one has to resort to such extrinsic aids to construction as permissible. That in such cases it is allowable to travel beyond the four corners of the statute for the purpose of ascertaining the meaning of the word or the sense in which the legislature when they passed the statute intended the word to be understood, is a proposition which cannot be disputed. Nor can it be doubted that for this limited purpose an investigation into the history of the enactment may be embarked upon. The word has to be understood in the import it bore at the time the statute came into being ; and for this purpose other statutes, in parimateria, if any, may be taken into account. There is also a canon of construction, though it is not really necessary to resort to it in the present case, namely that while "the mere fact that it may have been better to extend a statute to other cases, or that it can apparently be gathered that such an intention was probable, is not enough to justify the putting of an interpretation upon the statute which would necessitate reading into it words extending the statute to other cases, "yet" If there are circumstances which show that words in a statute must have been used by the legislature in a larger sense than their ordinary meaning the Court is bound to read them in that sense: (Beale on Cardinal Rules of Legal Interpretation, Edn. 2, p. 333).

7. The Evidence Act is now more than half a century old, and though it may not rank with "ancient statutes" in the sense in which that expression is used in forensic language, the principle will hold good that great regard ought to be paid, in construing a statute, to the construction which was put upon it by those who lived about the time or soon after it was made, because the meaning which a particular word or expression bore in those days may have got mixed up or blurred during the interval that has elapsed. From this point of view, I regard the decision of this

Court in the case of *Queen v. Hurrybole Chunder Ghose*¹¹ as a decision of very great importance. It is true that the facts of that case were very different from those of the cases which have given rise to the present question. And this fact has been very forcibly pointed out in the decision of the Patna High Court in the case of *Radha Kishun Marwari v. Emperor*¹² But it seems to me that the most important aspect of the weighty pronouncement of Garth, C. J., in that case has not and I say this with very great respect been sufficiently appreciated in the case just cited. Dealing with one of the arguments addressed to the Court which was to the effect that the term "Police Officer" in Section 25, Evidence Act, comprised only that class of persons who are called in the Bengal Police Act (4 of 1866), "members of the Police Force," Garth, C.J., said:

On looking to the Police Act of 1861, it will be found that the term "Police Officer" as used in that Act has generally the same meaning as a member of the

¹¹(1876) 1 Cal 207

¹²AIR 1932 Pat 298

Police Force in the Act of 1886; but in construing the 25th Section of the Evidence Act of 1872, I consider that the term "Police Officer" should be read not in any strict technical sense but according to the more comprehensive and popular meaning.

8. Now, what is that more comprehensive and popular meaning which the term "Police Officer" bore in those days? In the case of *Radha Kishun Marwari v. Emperor*¹³ Courtney-Terrel, C.J., has observed:

The fact is that the term "Police Officer" is sufficiently well understood to allow of its use without any precise definition.

9. The question is not how it is understood at present, but how it was understood in or about 1872. In the same case Fazl Ali, J., has drawn a distinction between a person who is nothing but a Police Officer and one who is primarily not a Police Officer but merely invested with the powers of a Police Officer. Such a distinction no doubt has come into existence by the creation of distinct Departments by the Government of the country. But the question is whether when the Evidence Act was enacted such a distinction really existed and was intended. Agarwala, J., in the said case appears to have held that no person is a police officer unless he be enrolled in or appointed a member of the Police Force or is declared by statute to be a member of that force, a dictum which is directly opposed to that of Garth, C. J., quoted above. It may be pointed out that the aforesaid dictum of Garth, C.J., has been followed by this Court ever since: see, e.g., *Queen-Empress v. Salemuddin*¹⁴ and by other Courts as well: see *Queen Empress v. Nagla Kala*¹⁵ and has never been dissented from anywhere else.

10. A history of the provision contained in Section 25, Evidence Act, is to be found in the Full Bench decision of the Allahabad High Court in the celebrated case of *Queen-Empress v. Babu Lal*¹⁶ In that case it has been shown how for the first time a new rule came into existence in the shape of Section 148, Criminal P. C. (Act 25 of 1861), which in the most imperative terms laid

down that no confession or admission made to a police officer, shall be used as evidence against an accused person.

11. And it is this rule which thus came into existence strictly speaking not as a rule of evidence, but rather as a rule governing the action of Police Officers and as a matter of criminal procedure, that was subsequently removed into the Evidence Act in 1872, in Section 25 as a rule of evidence. Act 25 of 1861 received the assent of the Governor-General in Council on 5th September 1861. In it the powers and duties of Police Officers of different grades acting under the Code were defined, but the term "Police Officer" itself was not defined. But a few months before, another Act, namely the General Police Act (5 of 1861) had been passed in which there was a definition or rather interpretation of the word "police" in its Section 1 which said:

The word "police" shall include all persons who shall be enrolled under this Act.

¹³ AIR 1932 Pat 298

¹⁵(1898) 22 Bom 235

¹⁴(1899) 26 Cal 569

¹⁶(1884) 6 All 509

12. By this Act a Police Force consisting of the entire police establishment under a Local Government was created for the purposes of the Act and provision was made for formal enrolment of such establishment into that Force ; and in it there were various other provisions enacted as regards their subordination, duties and privileges ; the formation of a Police Superannuation Fund and a General Police Fund ; the framing of rules for the organization, classification and distribution of Police Force ; the appointment of additional or Special Police Officers ; and so on. Two of the sections of this Act are important, namely Section 20 and 21. Section 20 says:

Police officers, enrolled under this Act, shall not exercise any authority, except the authority, provided for a Police Officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

13. Section 21 says:

Nothing in this Act shall affect any Hereditary or other village police officer unless such officers shall be enrolled as police officers under this Act. When so enrolled, such officers shall be bound by the provisions of the last preceding section. No Hereditary or other village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act 20 of 1856 (to make better provision for the appointment and maintenance of Police Chowkidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal) is employed out of the district for which he shall have been appointed under that Act he shall not be paid out of the rates levied under the said Act for that district.

14. It has been pointed out that in the interpretation clause, Section 1 of the Act, the word "include" has been used Sections 20 and 21, make it perfectly clear that the word has not been

used in the sense of "means and includes," because those sections proceed on the supposition that there are Police Officers, called by whatever name they might be, who are not Police Officers enrolled under the Act. The word "include" has been used, as it is very generally used in interpretation clauses, in order to enlarge the meaning of words or phrases occurring in the body of the statute ; and when so used the words or phrases must be construed as comprehending not only such things as they signify according to their natural import but those things which the interpretation clause declares that they shall include: see Per Lord Watson in *Dilworth v. Commissioners of Stamps*¹⁷ The natural import of the word "police" as understood in 1861, therefore was something more than the Police Force enrolled Under Act 5 of 1861. The preamble to the Act says:

Whereas it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime.

15. And Section 6 of the Act, which conferred Magisterial powers upon certain superior officers of the police says:

They shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension and detention

¹⁷(1899) AC 99 at pp. 105 to 106

of offenders in order to their being brought before a Magistrate.

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

The department of Government which is concerned with the maintenance of public order and safety, and the enforcement of the law, the extent of its functions varying greatly in different countries and at different periods. The civil force to which is entrusted the duty of maintaining public order, enforcing regulations for the prevention and punishment of the breaches of the law and detecting crime; construed as plural, the members of a police force ; the constabulary of a locality.

17. All these duties which Police Officers discharge are but different phases of and means for carrying out the two more comprehensive duties, namely, of prevention of crimes and detection

of crimes. It is true that it has nowhere been defined what minimum aggregation of functions will constitute a person a Police Officer within the meaning of Section 25 of the Act; but the more comprehensive and popular signification of the term "Police Officer," such as it was in 1861, it is not difficult to appreciate from what was said by the Legislature in the General Police Act (5 of 1861). Powers and duties of Police Officers under Act, 5 of 1861 or under Act 25 of 1861 or under any other statute, or the different powers which different grades of Police Officers have under any particular enactment are mere matters of details worked out in order to enable the entire body, taken as a whole to carry out the two essential duties entrusted to them namely the prevention and detection of crimes. These two features of the duties which the police have to discharge and especially that of detection of offenders, which involves the duty of holding investigations, have always been regarded as marking them out for special treatment in so far as confessions made to them are concerned. Of this only one instance need be given here. There is, as is well-known, a preponderance of judicial authority in favour of the view that a chowkidar is a "Police Officer" within the meaning of Section 25, Evidence Act, *Queen-Empress v. Salemuddin*¹⁸ *Queen-Empress v. Indra Chandra Pal*¹⁹ *Queen. Empress v. Keta Baisnavi*²⁰ Also *Nazir Jharu dar v. King. Emperor* 9 CWN 474, in which the admissibility of a confession before a chowkidar was doubted. In one of these cases, namely Indra Chandra Pal's case 2 CWN 637 it was pointed out that a chowkidar, although he is not a Police Officer under Act 5 of 1861 is a Police Officer under Regn. 20 of 1817 and Act 1 of 1892. The contrary view which was taken in the case of *Queen-Empress v. Bepin Bihari Dey*²¹ and which is no longer tenable in view of the express enactments relied upon in Indra Chandra Pal's case 2 CWN 637, was based upon the distinction that a chowkidar had no power of holding an investigation for the purpose of detecting offenders. The learned Judges said in that case:

¹⁸ (1899) 26 Cal 569

²⁰ 2 CWN (180)

¹⁹ 2 CWN 637

²¹ 2 CWN 71

The reason why the law in Sections 25 and 26; Evidence Act, jealously excludes a confession made to Police Officer, and a confession made by an accused whilst in the custody of a Police Officer unless it be made in the immediate presence of a Magistrate, is that there is room for apprehension that a Police Officer who is armed with large powers over accused persons may unwillingly exert terror in their, minds and extort false and involuntary confessions; and his duty to investigate criminal cases and to detect offenders and to bring them to justice may make him feel tempted to obtain confessions from threat, inducement or promise or other improper influence; but the reason for the rule can have no application to a chowkidar, who is vested with no such power, on whom, no such duty of detecting and bringing to justice an offender is imposed, and who is not therefore likely to exercise any such influence or to be under any such temptation. The view we take is to some extent supported by the case of *Queen-Empress v, Tatyā Appaji* (1896) 20 Bom 795.

18. It is mainly this duty of detection of offenders and the consequential duty of bringing an offender to justice which requires an investigation to be made that differentiates a private individual from a police man. And although it may be that different grades of policemen have

different powers in the matter of apprehension or of detention, if the person concerned belongs , to a body whose duty it is to prevent the commission of offences as well as to detect offenders, that person, whatever his own powers, individually speaking, may be fulfils the requirements of the idea conveyed by the expression "Police Officer." At the time of forming the Decennial Settlement of the land revenue for the Provinces of Bengal, Bihar and Orissa in 1790, the landholders and farmers of land were, in conformity with former usage, bound to maintain the public peace and were answerable for robberies. But this responsibility was found as of little effect owing to the general impracticability of enforcing it ; and accordingly in 1793 Regn. 22 of that year was enacted whereby the police were declared to be under the executive charge of officers of Government, and the landholders and farmers of land were required to discharge their police establishments and not to entertain them in future. Various Regulations were subsequently enacted from time to time for their better organization and greater efficiency, the powers of respective grades of Police Officers being more and more accurately defined, outside agencies being from time to time absorbed into the regular establishment under different denominations, and the whole department working for a common end, namely the prevention and detection of crime, and crimes which were previously unprovided for, being gradually brought in within their cognizance.

19. From the year 1773 the monopoly of opium was first assumed in behalf of the company and by 1797-98 the system of providing opium by agencies in the Provinces of Bengal, Bihar, Orissa and Benares was completely established. The intermediate Regulations by which opium monopoly was gradually systematized need not be referred to because all of them were superseded by Regn. 13 of 1816: see Harrington's Analysis, Part 6, Section 3.

20. It will be seen from this Regulation that while opium was made into a separate department for the purpose of revenue, Police and Abkari Darogas were to act simultaneously for the prevention and detection of offences committed in breach of the Regulation (e.g., see Sections 32, 33, 35, 36 etc). In the Opium Act (13 of 1857) there are also similar provisions, e.g., see Sections 22, 23 and 24. Section 22 enjoined land-holders and others to give information of illegal cultivation of poppy to the Police or Abkari Darogas or Opium Gomasthas. Section 23 provided that all Police and Abkari Darogas and Opium Gomasthas and all native officers of Government of whatever description and all chowkidars and other village Paiks and Police Officers should give information of illegal cultivation of poppy to superior quarters. And Section 24 which is very important because it gave powers of investigation of granting bail and of sending an accused up in custody, was in these words:

Whenever a Police or Abkari Darogah or Opium Gomastha shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot and if the information be correct, shall attach the crop so illegally cultivated and report the same without delay to the authority to which he may be subordinate. He shall at the same time take security from the cultivator of the land for his

appearance before the Magistrate; and in the event of such cultivator not giving the required security he shall send him in custody to the Magistrate.

21. After the Sayer collections were resumed from the land-holders in 1790 it was considered expedient to continue and extend the duties on spirituous or fermented liquors and intoxicating drugs for the reason that such duties would check their immoderate use and at the same time augment the public revenue. After several earlier Regulations, Reg. 6 of 1800 was passed for the purpose of more effectually accomplishing the original objects of the tax by enhancing the price to the consumer as well as to give the Magistrates a more immediate and efficient control over the conduct of the vendors and to render the tax, as much as possible conducive to the general purposes of the police.

22. Distilleries were to be established and were to be conducted under the immediate control of the Collectors or other officers invested with the charge of the Abkari Mehal. These officers were not only empowered to cause the apprehension of offenders but were also vested with Magisterial powers to hold investigations and award punishment. Orders passed, search warrants issued and penalties imposed by these officers could be enforced, executed or realized by such Subordinate Officers in the fixed establishment of the Collector as the Nazir, the Abkari Daroga or some such officer ; and Magistrates and police officers were enjoined to support these officers of the Collector in the discharge of their duties (vide Section 23 of the Regulation). There were no other enactments on this subject prior to 1872 which are worth mentioning in this connexion. From what has been stated above, I think it is clear that before 1872 when the Evidence Act was enacted, except as regards the illegal cultivation of poppy in respect of which an officer concerned had received intelligence, a matter which was dealt with by Section 24, Opium Act 13 of 1857, no police powers were exercisable by officers of the Opium or the Excise Department. And it is also clear that the aforesaid provision namely Section 24 of Act 13 of 1857, gave only a very limited power to hold a summary inquiry and to grant bail or to send the offender in custody. On the other hand in the matter of prevention and detection of such offences as related to these branches of revenue, Abkari and Excise Officers as well as policemen worked hand in hand. And this, I understand, is why even to-day men of the excise are not unoften in common parlance in Bengali called men of the Abkari Police.

23. It was in this state of the law that in 1872 the Evidence Act was enacted, and in that Act the legislature did not consider it necessary to indicate what special meaning, if any, was to be attached to the word "police officer," with regard to confessions made to whom a most imperative rule of evidence was enacted. The only reason why they omitted to do so, in my view, was that at that time it was intended to express by that term all officers other than Magistrates who were entrusted with the duty of preventing and detecting crimes and specially the latter. It is the nature of the duties, performance of which was likely to give occasion for improper influence being exercised or felt, and not any particular aversion for a particular department of public service that must have moved the legislature in enacting the provision. I am therefore of opinion

that if matters which previously did not fall within the category of crimes subsequently came to be recognized as such, and on that officers have been appointed to discharge or have been vested with powers of discharging duties which a police officer had to discharge in 1872, when whatever may be the name of the Department to which such officers may have been attached, such officers must be regarded as coming within the term "police officer" with regard to whom Section 25, Evidence Act, was intended to be applied.

24. It should be noted that in that section the words used are, "as against a person accused of any offence." I can find no reason why in 1872 in respect of an offence under the then Opium Act (13 of 1857) the legislature could have thought of excluding, a confession made to a member of the regular police force but not a confession made to an Abkari or Excise Officer, if such officer was, in fact, holding an investigation into an offence and was exercising such powers as a police officer is competent to exercise. The fact is that in those days he had no such powers and so could not exercise them. When in course of time he came to have those powers and was able to exercise them in respect of offences which were not known to law in those days and only subsequently came to be regarded as such, such an officer, when so acting is an officer for whom the term " police officer" used in Section 25, Evidence Act was meant.

25. As militating against the view which I am inclined to take as stated above, two points have been raised. One is that in Section 125, Evidence Act, there is a distinction observed between "police officers" and "revenue officers." And the other is that in Section 25 of the Act in respect of an officer of the police there is a personal disability implied irrespective of the question whether he is holding an investigation or not, while no such disability can be said to have been intended in the case of an Excise Officer. So far as the first of these points is concerned I entirely agree in what was said by Marten, C.J., in the case of *Nanoo v. Emperor*²² to meet it. And as regards the second point I need only observe that whereas police officers by reason of Section 22 of Act 5 of 1861 are to be always considered on duty for the purposes of the Act, all revenue officers on the other hand, are not police officers and it is only such of them as may be exercising the powers of police officers and only when exercising such powers they may be regarded as police officers. In the conclusion that I have arrived at as stated above, I feel fortified by the intention, as I appreciate it, of the legislature as expressed in the enactments that have come into being since 1872. The powers and duties of Excise Officers investigating

²²(5) (at p. 95 of 51 Bom)

offences have been gradually brought more and more on a line with those of the officers of the Police Force, and they have been made Police Officers for the purposes of such investigations in all possible manner (vide Chapter 9, Bengal Excise Act 5 B. C. of 1909) as it now stands, and also the amendments introduced into Opium Act (1 of 1878) by the Opium Bengal (Amendment) Act (5 B. C. of 1933) which I am informed has not yet come into force. I would accordingly answer the question formulated in the order of reference in the affirmative, and also the broader question, which arises on it, by saying that the legislature in using the term 'Police Officer' in

Section 25, Evidence Act, did not intend to exclude from its meaning Excise Officers exercising powers of detection and investigation of crimes committed against Excise Laws.

Costello, J.

26. I have had the advantage and the pleasure not only of perusing the judgment which has just been delivered by Mukerji, J., but of hearing the opinions of the other members of the Court and I much regret that I am unable to agree with the view taken by them. The question which was referred to us was in the following terms: Is an Excise Officer who, in the conduct of an investigation of an offence against the Excise, exercises the powers conferred by the Code of Criminal Procedure upon an officer in charge of the police station, a police officer within the meaning of Section 25, Evidence Act. It is to be borne in mind however that the case out of which this reference arises was a prosecution Under Section 9, Opium Act of 1878 and the confession to which objection was taken was made to an officer acting in the exercise of the powers given by that Act. It follows therefore that the terms of the reference to a Full Bench were wider than were actually necessary for the purpose of the proceedings before the Bench which made the reference. By general consent however it was agreed that we should give an answer to the comprehensive question submitted by Lort Williams, J., and M.C.Ghose, J. As regards a case falling solely within the ambit of the Opium Act, it seemed quite clear that until recently at any rate an officer acting under the powers contained in that Act was in no sense whatever a Police Officer and so it was laid down in the case of *Ah Foong v. Emperor*²³ The position however has now been altered to some extent by reason of the provisions of the Opium (Bengal Amendment) Act, 1933 Bengal Act 5 of 1933, and I think we may take it that by virtue of those provisions an officer acting under the Opium Act is now very much in the same position as an ordinary Excise Officer. The question which we have to decide may be simply stated in this form. Is an Excise Officer a Police Officer for the purpose of Section 25, Evidence Act? At first glance one would be disposed without any hesitation to reply that, of course, an Excise Officer is not a police officer. I concede however that the matter cannot be disposed of quite so summarily or so succinctly as that because the problem is complicated by the provisions of Section 74, Excise Act. No doubt in order to come to a decision on the point it is desirable if not indeed necessary to delve into the history of the relevant legislation, but it is of even greater importance in my opinion to remember at the outset that the Evidence Act contains those provisions which are set forth in Section 24, Evidence Act, as well as the provisions in Sections 25, 26 and 27.

27. The learned advocate who appeared before us on behalf of the appellant to argue

²³ AIR 1919 Cal 696

against the admissibility of the confession upon which no doubt the conviction in the present case is largely based, contended before us that the Court ought to have regard to the spirit and the intention underlying the prohibition contained in Section 25, Evidence Act, and in particular, to the intention of the legislature at the time when the provision, now embodied in Section 25, first came into existence. The learned Advocate-General on the other hand argued that there is no

difficulty in interpreting Section 25 if the elementary principles for the construction of statutes are strictly adhered to and he contended and in my opinion rightly, that the expression with which we are now concerned must be given its ordinary and plain meaning according to the letter of the words used, any reference to spirit or intention being entirely by the mark. The provisions now contained in Section 25, Evidence Act, originally came into existence as Section 148, Criminal P. C, 1861, but were subsequently transferred to the Evidence Act as Section 25 when that Act was passed in the year 1872. The Advocate-General reminded us that enactments must be construed by reference to the meaning of the words used at the time when the statute was passed and that therefore one of the points we have to consider is what was the meaning of the expression 'police officer' in the year 1861. In that year was passed the Police Act (Act 5 of 1861) and in Section 1 of that Act the word 'police' was stated to include all persons who would be enrolled under that Act. No doubt that definition was not exhaustive but it does seem to me that the Criminal Procedure Code of 1861 and the Police Act, 1861, were intended to be taken together to form as it were one complete scheme for the prevention and detection and punishment of offences against the State. The Advocate-General while deprecating any speculation as to the intention of the legislature at the time when the provisions now embodied in Section 25, Evidence Act, first came into existence, contended nevertheless that if as Mr. Fazlul Huq had stated the legislature did not in the year 1861 contemplate the existence of Excise Officer then it obviously follows that the legislature could never have intended to include them within the meaning of the expression 'police officer.' The Advocate-General referred us to the well-known dictum of Lord Macnaughten in the case of *Vacher and Sons., Ltd. v. London Society of Compositors*²⁴ as an authority for the proposition that for the purpose of construing words used in a statutory enactment the grammatical and ordinary sense of the words is to be adhered to. Lord Macnaughten quoted the warning given by Tindal, C.J., in the *Sussex Peerage* case (1844) 11 Cl and F 85 (at p. 143), which is to this effect:

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expand these words in their natural and ordinary sense. The words themselves alone do, in each case best declare the intention of the legislature.

28. In this connexion I would also refer to the case of *Satish Chandra Chakravarli v. Ram Doyal De*²⁵ where a Full Bench of this Court emphasized the proposition that the Court must administer the law as prescribed by the legislature and neither enlarge nor restrict its scope. It seems to me therefore that as a matter of first impression one ought quite definitely to conclude that when the legislature conferred upon the people of this country, the important privilege now contained in the provisions of Section 25, Evidence Act, the legislature in using the words "police officer" must have intended that expression to bear such interpretation as would ordinarily be put upon it in the year 1861 by the people at

²⁴(1913) AC 107

²⁵AIR 1921 Cal 1

large; just that and nothing more and that no further implication should be imported into it. That

in my opinion is a natural, reasonable and proper view, having regard to the fact that the words themselves are on the face of them "precise and unambiguous" to use the words of Tindal, C.J.

29. It is in actual fact the view which has been consistently and repeatedly taken by a large number of Judges of this Court and not only is there a long line of decisions of this Court to that effect but the other High Courts throughout India have given decisions in support of that view. It seems abundantly clear therefore that but for the provisions of Section 74, Excise Act., and the somewhat refined arguments which have been based upon those provisions, no possible doubt would ever have arisen as to whether or not it ought to be held that an Excise Officer is a police officer for the purpose of Section 25, Evidence Act. As already indicated it is, in my opinion, vital, that in dealing with the point we have to decide we should not be unmindful of the fact that the fundamental and indeed paramount provisions with regard to the admissibility of confessions are contained in Section 24, Evidence Act, which section embodies the age-long principles of English Common Law upon this point. The provisions of Sections 25, 26 and 27, Evidence Act, differ widely from the law of England and they were originally inserted in the Code of Criminal Procedure 1861, for the reason it is generally conceded, that the police in this country were suspected and were not trusted not to use improper means of obtaining confessions from persons in their custody. The provisions of Section 148, Criminal P. C. 1861, came into existence in order to prevent, so it has been said, the practice of police officer using improper and even violent methods for the purpose of extorting confessions from alleged wrong-doers in the hope of securing their own professional advancement as a reward for convictions obtained. Be that as it may, however it is obvious that the provisions of Sections 25, 26 and 27 did in a sense confer on a limited class of persons, that is to say, presumed wrong-doers, a very valuable privilege as against the community at large.

30. The provisions of Section 24 are themselves extremely wide and it is difficult to see why it should have been thought necessary wholly to exclude for example the incriminating statement of an individual who entirely of his own volition has walked into a police station or addressed a police officer and announced that he has done something which is a contravention of the criminal law. The provisions of Section 24 are of course sufficient to exclude any confessions which are not made entirely voluntarily. To my mind it is clear that in effect the provisions of Section 25 cast a very serious stigma upon the integrity of the police as such and one ought to hesitate a long time and be absolutely sure of the necessity for so doing before extending the scope of Section 25 in such a way as to cast an equal stigma upon officers engaged in the excise service. Moreover one ought to be satisfied beyond all doubt whatever before coming to a conclusion which has the effect of further weighing the scales of justice in favor of wrong-doers as against those charged with the prevention, detection and punishment of contraventions of public law. It has been mentioned by my brother Mukerji that there are, as I have stated, a large number of cases in which the Courts have declined to put upon the expression "police officer" for the purposes of Section 25, Evidence Act, the extended and to my mind wrongly extended meaning which was contended for in these proceedings. I have already

referred to the case of *Ah Foong v. Emperor*²⁶ which was a case Under Section 9, Opium, Act of 1878, in fact a case very similar to the one out of which this reference arises and there it was held by Sir Lancelot Sanderson, the then Chief Justice of this Court, that certain statements could not be rejected Under Section 25, Evidence Act, for it could not be said that the excise officers engaged in the matter were police officers.

31. With that view Beachcroft, J., agreed. A year or two before there had been a case in the Chief Court of the *Punjab Emperor v. Wazir Singh*²⁷ in which it was assumed, apparently, that the Excise Inspector acting in the case was not a police officer. Shah Din, J., and Chevis, J., seemed to have had no doubt about the matter. A year later, in 1917, in a case in this Court, *Rukumali v. Emperor*²⁸ it was held by Chitty and Smither, JJ., that in the absence of any inducement, threat or promise a confession to the Superintendent of Excise was not shut out under Sections 24 and 25, Evidence Act. In the year 1922 there was a case in the Court of the *Judicial Commissioner of Sindh, Tillibai v. Emperor*²⁹ where the decision in *Ah Foong v. Emperor*³⁰ was followed. The learned Judges, Kennedy, A.J.C, and Rupchand Bilaram, A.J.C, in dealing with the matter which was one concerned with an offence Under Section 43, Bombay Abkari Act, 1878 said:

nothing has been pointed out which extends the operation of Section 25 to an Abkari Inspector and Abkari peons. On the contrary there is a case in *Ah Foong v. Emperor*³¹ which is authority for the proposition that abkari peons and officers are not to be considered as police officers for the purpose of Section 25, Evidence Act.

32. The case of *Ah Foong v. Emperor*³² was followed two years later in the case of *Budhu v. Emperor*³³ That also was a case arising out of the Bombay Abkari Act (5 of 1878). In that case Kincaid, J.C, and Barlee, A.J.C, held:

It is now settled law that an excise officer is not a police officer within the meaning of the Evidence Act.

33. They in fact followed the case of *Ah Foong v. Emperor*³⁴ In the same year there was a decision on similar lines in the Bombay High Court in *Raphael Pereira v. Emperor*³⁵, In the following year again there was the decision of this Court in the case of *Har bhanjan Sao v. Emperor*³⁶, where again Suhrawardy, J., and Mitter, J., held that a confession made to an Excise Officer is admissible in evidence as an Excise Officer is not a Police Officer and Section 25, Evidence Act, does not apply to such a confession. Two years later there was a case in the Rangoon High Court, *Maung San Myin v. Emperor*³⁷ where it was held that although the Excise Officer concerned in the case had powers of arrest, search, granting bail and so on, under the Burma Excise Act, 1917, he was not a Police Officer. Therefore the admission made to such an Excise Officer was admissible in evidence. There is a passage in the judgment of Baguley, J., in this case where in dealing with the previous decision of *V.R.Venkataraman v. Emperor*³⁸ the

learned Judge said:

Had the trying Magistrate looked into the Acts a little more closely he would have

²⁶ AIR 1919 Cal 696

²⁸ AIR 1918 Cal 138

³⁰ AIR 1919 Cal 696

²⁷ AIR 1918 Lah 372

²⁹ AIR 1925 Sind 70

³¹ AIR 1919 Cal 696

³² AIR 1919 Cal 696

³⁴ AIR 1919 Cal 696

³⁶ AIR 1927 Cal 527:(1927)ILR 54 Cal 601

³³ AIR 1927 Sind 112

³⁵ AIR 1926 Bom 517

³⁷ AIR 1930 Rang 49

³⁸(1909) 3UBR1

seen that excise officers are now appointed under the Burma Excise Act 5 of 1917. The judgment in Venkataraman's case (1909) 3UBR1 was delivered in 1898 and then the present Act was not in force. In those days all excise officers were sworn in as police officers because the old Act did not give them the necessary powers of arrest, search, granting bail and so on. The Act of 1917 gives all these powers direct to the excise officer as excise officer, and they are no longer police officers. Their position appears to have been assimilated to the position of excise officers of Bengal.

34. The above passage occurs at p. 773 of the report and in my judgment this expression of opinion suggests the key to the problem which was before us in the present reference. In my judgment the right view of the matter is that although Excise Officers have certain police powers they are not for all purposes Police Officers. In the year 1930 the point now under discussion arose in a case which came before Suhrawardy, J. and myself, *Tura Sardar v. Emperor*³⁹ and there we followed the decision in *Harbhanjan Sao v. Emperor*⁴⁰, The accused in that case was charged under Sections 46 and 61, Excise Act, and had been convicted Under Section 46. Suhrawardy, J. and myself held that an Excise Officer is not a Police Officer within the meaning of Section 25, Evidence Act, and consequently a confession to an Excise Sub-Inspector and an Excise Inspector was not excluded by reason of the provisions of Section 25, Evidence Act. It was argued before us in the case that as the powers of an investigating Police Officer under Sections 160 to 170, Criminal P. C., have been conferred on an Excise Officer by Section 74, Excise Act, he must perforce be a Police Officer at any rate when he is in the course of conducting an investigation into an alleged offence and when he is exercising the powers conferred by the Criminal Procedure Code upon an officer in charge of a police station by virtue of the provisions of Section 74, Excise Act.

35. Although this point was raised it was not necessary to decide it for the purpose of the case then before us. We said in the course of our judgment:

Mr. Pal argues that an Excise Officer is a Police Officer within the meaning of Section 25, Evidence Act. The point may be arguable but so far as this Court is concerned it is not now res integra. It has been held in several cases that he is not, in *Harbhanjan Sao v. Emperor*⁴¹ *Bohumali v. Emperor*⁴² and *Ah Foong v. Emperor*⁴³ Reference has been made to a Full Bench decision of the Bombay High Court in *Nanoo Sheikh Ahmed v. Emperor*⁴⁴,

36. The learned Chief Justice giving the judgment of the Full Bench at p. 93 of the report distinguished the Calcutta case on the ground that Abkari law in Calcutta was different from that in Bombay and that the latter was more stringent than the former. This point is settled by authorities of this Court and as the law now stands an Excise Officer is not a Police Officer within the meaning of Section 25, Evidence Act. As a branch of this ground Mr. Pal has also argued that Under Section 74, Bengal Excise Act, 1909, an Excise Officer is a Police Officer within the meaning of Section 162, Criminal P. C. and any statement made to him cannot be proved against the accused. Under Section 74,

³⁹ AIR 1980 Cal 710

⁴¹ AIR 1930 Rang 49

⁴⁰ AIR 1927 Cal 527: (1927)ILR 54 Cal 601

⁴² AIR 1918 Cal 138

⁴³ AIR 1919 Cal 696

⁴⁴ AIR 1927 Bom 4 : ILR 1927 51 Bom 78

Excise Act, whenever an Excise Officer suspects the commission of an offence he is empowered to investigate it and in carrying on such investigation the powers of a Police Officer under Sections 160 to 170, Criminal P.C., have been conferred upon him." We then proceeded to say:

It may be reasonable to argue that when the power of investigation under this section has been conferred upon the Excise Officer it must be taken to have been conferred with all the limitations which the law imposes. But in the present case the question does not arise.

37. It was no doubt reasonable to argue that an Excise Officer must be taken, when clothed with certain powers of a Police Officer, to be subject to all the limitations which the law imposes but that is very far from saying that when an Excise Officer is clothed with certain powers for the purpose of one Act he is subject to the disabilities or the taints imposed by another. I must now refer to the decisions which favor the view that an Excise Officer is a Police Officer. The case which, with all respect to the Judges who decided it, has created in my opinion unnecessary doubt and has started a fallacious line of reasoning if I may say so with all deference to the opinion of the majority of the members of this Bench is the case of *Nanoo Sheikh Ahmed v. Emperor*⁴⁵. The underlying fallacies of the judgment in that case were in my opinion exposed by Terrel, C.J., in the Patna High Court in a case to which I shall refer in detail later. In that Bombay case it was held that an abkari officer, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Criminal Procedure Code, 1898, upon an officer in charge of police station for the investigation of a cognizable offence, is a police officer within the meaning of Section 25, Evidence Act, 1872, and any confession made to such an officer in the course of his investigation under the Abkari Act or the Criminal Procedure Code is inadmissible in evidence. That is a, decision of a Full Bench of the Bombay High Court, and it seems to suggest that excise officers are sometimes police officers and that others are not.

38. If however the legislature had ever intended to make excise officers even when functioning under the powers conferred upon them by Section 74, Excise Act police officers for all purposes

the legislature could have said so in plain and unmistakable terms. Mr. Huq in the course of his argument admitted to all intents and purposes that what he was contending for, was that the Court should in effect arrogate to it the functions of the legislature and insert into Section 25, Evidence Act, after the words "police officer" some such expression "or such other persons as may from time to time and for certain purposes be acting as police officers under some statutory authority." I can only repeat that had the legislature in the year 1861 or in the year 1872 or at any subsequent time intended any such thing, in my opinion they would have said so in clear and unmistakable terms and it is not for this Court or any other Court to vary or add to the plain language of Section 25, particularly having regard to the fact which I have already emphasized that any addition upon the lines indicated would have the effect of conferring the extraordinary privilege given by Section 25 on an additional class of wrong-doers and indeed confer on a limited class of the community an indulgence of a kind not enjoyed in all probability by any one in any country other than India.

⁴⁵ AIR 1927 Bom 4 : ILR 1927 51 Bom 78

39. The decision of the Full Bench of the Bombay High Court was followed by Section by S.K.Ghose, J., with the concurrence of Lort- Williams, J., in the case of *Ibrahim Ahmed v. Emperor*⁴⁶, The headnote of that case reads as follows:

In spite of the restricted provisions of the Opium Act, an excise officer in Bengal is, by virtue of the provisions of the Bengal Excise Act, a police officer within the meaning of Section 25, Evidence Act, and a confession made to such an officer during investigation is not admissible in evidence.

40. My brother Ghose in that case said:

Section 74, Excise Act, prescribes the powers and the duties of excise officers investigating offences and the provision shows that such officers are virtually deemed to be police officers.

41. With all respect to my learned brother I can only say that in my opinion the conjunction of the word "virtually" and the word "deemed" cannot bring it about that excise officers are identical with police officers. On the contrary it seems to me that to say that one thing is "virtually deemed" to be another is less convincing even then to say simply that one thing is "deemed" to be another. It is in my opinion putting the supposed assimilation one stage further off. Even when it can accurately be said that one thing is to be deemed to be another that is by no means tantamount to saying that the one thing is the same as the other. I am bound to say that with all respect to my learned brother I disagree with the reasoning which appears at the bottom of p. 603 and the top of p. 604 of the report as contained in the sentence:

On principle also the position of a police officer cannot be distinguished from that of an excise officer with regard to an offence under the Excise Act, because an excise officer is

also interested in the conviction of the accused and in a position to dominate him.

42. I would point out that where there is any question of domination, the matter is amply provided for by the provisions of Section 24, Evidence Act, and where there is a possibility of domination or being in a position to dominate, that section provides the criterion to be applied. If domination were an important test for the determination of the question now before us, then with almost equal logic and with parity of reasoning it might equally well be said that parents, senior relations and even spiritual advisers ought to be deemed in certain circumstances to be in the position of police officers for the purpose of Section 25, Evidence Act. It cannot in my opinion be too often emphasized that as Section 25 contains an absolute prohibition and an unqualified exclusion of statements which under English criminal jurisprudence would generally speaking be regarded not only as admissible but valuable evidence, the provisions must be strictly construed and not extended by inductive reasoning or by the presumed effect of other statutes not directly concerned with the law of evidence. The transferring of the provisions now contained in Section 25, from Criminal P. C, to the Evidence Act indicates that the legislature intended that they should be treated solely under the law of evidence and nothing else. It is noteworthy that despite the decision of the Pull Bench of the Bombay

⁴⁶ AIR 1931 Cal 350 : (1931)ILR 58 Cal 1260

High Court and the judgment of S.K.Ghose, J., to which I have just referred, Sir C.C. Ghose while acting as Chief Justice of this Court with the concurrence of Pearson J., preferred to follow the earlier decisions of this Court: see *Mati Lal Kalowar v. Emperor*⁴⁷ and so accordingly held that an Excise Sub-Inspector is not a police officer within the meaning of Section 25, Evidence Act.

43. Consequently a confession made to such an officer is not inadmissible in evidence. The decisions which favor the view that an excise officer in certain circumstances may be a police officer for the purpose of Section 25, evidence Act, are all in essence based upon the fact that in Section 74, Sub-section 3, Bengal Excise Act, 1909, it is indicated that for the purpose of Section 156, Criminal P. C. 1898, the area to which an Excise Officer empowered Under Section 73(2) is appointed shall be deemed to be a police station and such officer shall be deemed to be the officer in charge of this station. It seems to me to follow therefore that any decision which makes an Excise Officer a Police Officer Under Section 25, Evidence Act, is ultimately founded on the presumed effect of the word "deemed" as used in that section. As the learned Advocate-General reminded us, the very use of the word "deemed" of itself seems to involve the concession that the one thing is not wholly the same as the other. It may well be therefore that an Excise Officer is never for all purposes a Police Officer. To say that one thing is to be deemed to be another is not the same thing as saying that the one thing is identical with the other thing. I have no doubt that for the limited, purpose of the Excise Act it may be that an Excise Officer is sometimes functioning as a Police Officer but that is very far from saying that he is not only to be considered as being but in fact is in precisely the same position as a Police Officer for all purposes whatever. In my opinion the Bengal Excise Act, 1909, confers by Section 74 certain

police powers on Excise Officer for certain limited purposes and not for all purposes and certainly not to the extent of stigmatising Excise Officers as being of an untrustworthy character as regards the securing of evidence. In my opinion it would be quite wrong for this Court or any other Court to do something which if it is to be done at all ought only to be done by the considered opinion of the legislature.

44. After a very careful consideration of the matter I take the view that an Excise Officer should not be put in the same category as a police officer for the purpose of Section 25 and I use that now to a large extent on those very observations of Sir Richard Garth, C.J., in the case of *Queen v. Hurribole Chunder Ghose*⁴⁸ which Mukerji, J., has cited in his judgment as supporting a contrary view. That case as Mukerji, J., observed was decided within a few years of the passing of the Evidence Act. The learned Chief Justice said:

The term Police officer should be read not in any strict technical sense, but according to its more comprehensive and popular meaning.

45. In my opinion although the observations to that effect are relied on in support of the view that Excise Officers are Police Officers, they may equally well and indeed with greater justification be taken to operate in the reverse sense, for one would imagine that no ordinary member of the public would have it in mind to identify an Excise Officer with a Police Officer for all purposes. I am supported in this view by the observations of Sir Courtney Terrel in the recent Patna case to which I shall refer in detail presently. It is

⁴⁷ AIR 1932 Cal 122

⁴⁸(1876) 1 Cal 207

in my judgment of supreme significance that as recently as last year in the Opium (Bengal Amendment) Act 1933, Officers of Excise are definitely differentiated from Police Officers, the categories referred to in that Act being Officers of the Excise, Police and Customs. We find for example in Section 20-J(1) this provision:

Every Excise, Police or Customs Officer making an investigation under this Act shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained from day to day until the investigation is closed.

46. That section seems to indicate that investigation by an Excise Officer is by no means necessarily the same thing as investigation by a Police Officer. It may be useful in this connection to re-call that in Section 45, Criminal P. C., a distinction is drawn between a Revenue Officer and a Police Officer.

The section (i.e. Section 25) however is limited merely to a Police Officer and we cannot read into it words which it does not contain.

48. In my judgment the decision in this case which is one of a Full Bench of the Patna High Court is of all the reported cases the most logical and consonant with common sense. Fazl Ali, J., pointed out that there was nothing to prevent the framers of the Evidence Act from saying expressly that confessions made to a Police Officer as well as to those persons who are for the time being and for certain limited purposes invested with the powers of a Police Officer are inadmissible in evidence, had they so intended and he then recalls that even in the Evidence Act itself the terms Police Officer and Revenue Officer have been used to connote two different classes of officers as is evidenced on reading Section 125 of the Act.

49. The same learned Judge also pointed out that it is wrong to hold that the power of "investigation" ought to be taken as being the criterion as to whether or not the Excise Officer is a Police Officer for the purpose of Section 25 and in this connection he said that it is to be noticed that it is not only certain Revenue Officers, such as Officers of the Excise and Salt departments, who are sometimes invested with the powers of a Police Officer in charge of a Police station, but a private individual may also under certain circumstances be invested with such powers.

50. For instance:

Under Section 202, Criminal P. C, if an enquiry or investigation under that section is delegated to a private person, such person is to exercise all the powers conferred by the Code of Criminal Procedure on an officer in charge of the police station except that he is not to have the powers to arrest without warrant.

51. Are we then to suppose that such a private individual should also be regarded as a Police Officer within the meaning of Section 25, Evidence Act? Another of the learned Judges discussing the same point said:

It may be observed however that there are officers who have no powers of investigation under Criminal Procedure Code, e.g., police constables, and yet such officers are nevertheless "Police Officers" within the meaning of Section 25, Evidence Act. The mere possession of certain of the powers of a Police Officer even though those powers include the power of investigation under the Code, does not suffice, in my opinion to convert into a Police Officer one who has no other claim to that status; e.g., Section 202, Criminal P. C, empowers a Magistrate receiving a complaint to direct an enquiry or investigation to be made by any Magistrate subordinate to him, or by a Police Officer or by such other person as he thinks fit, but it is not arguable that if such an investigation is directed to be made by a person other than a Police Officer such person would be converted into a Police Officer even while engaged in making the investigation." See per Agarwalla, J., at p. 66.

52. I most respectfully agree with the reasoning to be found in the judgment of the learned Judges of the Patna High Court. It seems to me altogether an unwarranted conclusion to say that because Excise Officers are given certain powers similar to those of the police that therefore they should necessarily fall within the meaning of the expression Police Officer as used in Section 25. I referred earlier in this judgment to the fact that in the opinion of the Judges of the Patna High Court the decision in the Bombay case of *Nanoo Sheikh Ahmed v. Emperor*⁴⁹, was founded on certain fallacies. As regards this Sir Courtney-Terrell says:

I find myself in complete disagreement with the arguments which found favour in that case and which have been presented before us and I think the fallacy is attributable to two causes. In the first place a judgment of Sir Richard Garth in the case of the *Queen v. Hurribole Chunder Ghose*⁵⁰ has been misunderstood and this misunderstanding has been the source of frequent error.

53. He goes on to say:

In other words Sir Richard Garth held that the term 'Police Officer' in the Evidence Act included all Police Officers and not merely a member of the police force within the meaning of the Bengal Act.

I consider that the term 'Police Officer' should be read not in any strict technical sense, but according to its more comprehensive and popular meaning. In common parlance and amongst the generality of people, the Commissioner and Deputy Commissioner of Police are understood to be officers of police, or in other words 'Police Officers' quite as much as the more ordinary members of the force.

55. He again quotes Sir Richard Garth by saying:

I think it better in construing a section such as the 25th, which was intended as a wholesome protection to the accused to construe it in its widest and most popular signification." Then Sir Courtney-Terrell says: "This very sound decision, that the term "Police Officer" in Section 25, Evidence Act, includes all kinds of Police

⁴⁹ AIR 1927 Bom 4 : ILR 1927 51 Bom 78

⁵⁰(1876) 1 Cal 207

Officers, has been misunderstood as a decision that the term includes not only Police Officers but any on whom is conferred the powers of a Police Officer, although it has nowhere been decided what minimum aggregation of functions will constitute any person a Police Officer within the meaning of the section.

56. I would most emphatically agree with Sir Courtney-Terrell where he says the fact is that the term 'Police Officer' is sufficiently well understood to allow of its use without any precise definition. It is well recognized that different countries and states confer upon their respective Police Officers different powers. Nevertheless it is not difficult to decide whether any particular

individual is or is not a Police Officer in any particular country and it has been held that: "A confession made to a Police Officer of a foreign force in the country where he is in fact a Police Officer is not admissible in an Indian trial.

57. Sir Courtney-Terrell then proceeds to deal with the second of the two fallacies underlying the decision in the Bombay case and all the decisions which would identify an Excise Officer with a Police Officer for the purposes of Section 25. The learned Chief Justice puts the matter thus:

Another source is the adoption of an erroneous canon of construction of statutes; that is, the consideration of what is supposed to be the object of this section of the Evidence Act and the adoption as an initial hypothesis of the theory that that object was to make inadmissible confessions made before persons possessing the power of investigation, search and arrest so that whereas a Sub-Inspector of Excise had been given these functions he came within the term 'Police Officer'.

58. Sir Courtney-Terrell thus discards the theory that the "power of investigation" given by Section 74 must necessarily convert the Excise Officer into a Police Officer. He then proceeds to say:

Courts of Justice are not concerned with the objects with which the legislature enacts any particular law unless in the particular enactment the object is stated as a guiding principle to be followed in interpretation. It may well be that the promoters of any particular Bill in the legislature may have particular objects in view but any section as ultimately enacted may well be the result of compromise and it may be that the words ultimately agreed upon have been passed by the legislature in such a form that one or all of the objects of the promoters is defeated. In cases, therefore where the legislature has not thought fit to express its intention otherwise than by the use of the words of the section those words must be followed.

59. In my opinion endless difficulties inevitably arise when Judges endeavour to extend the plain provisions of any statutory enactment. Where the language of an enactment is unambiguous it should be interpreted strictly and in a case such as the present it is to my mind in the highest degree unsound, and indeed dangerous for the Court, by subtlety of argument or by resorting to other statutes to extend provisions such as those contained in Section 25. I am clearly and definitely of opinion that when the legislature used the expression 'Police Officer' they meant a Police Officer in the sense in which that expression is generally understood by the populace at large and in no other sense at all. I would therefore hold that not only was the confession in the present case rightly admitted but any confession made to an officer acting under the Opium Act or the Excise Act would be equally well admissible in evidence unless it could be ruled out, under the provisions of Section 24, Evidence Act. Having regard to the importance of this matter to the public and the State and in view of the confusion set up by conflicting decisions it would

seem desirable that the legislature should deal with the matter again and give a clear definition of what it is intended the section should cover and possibly whether the time has not now come when the slur on the police implied in Section 25 should not be removed by the repeal of the section altogether seeing that the provisions of Section 24 afford ample safeguards against any real oppression or coercion.

Mallik, J.

60. I agree with my learned brother Mukerji, J.

Jack, J.

61. The question referred to us is whether an Excise Officer who in the conduct of the investigation of an offence against the Excise, exercises the powers conferred by the Code of Criminal Procedure upon an officer in charge of a Police Station for the investigation of a cognizable offence, is a Police Officer within the meaning of Section 25, Evidence Act. Section 25, Evidence Act states that:

No confession made to a Police Officer shall be proved as against a person accused of any offence.

62. Therefore to answer the question referred to us in the affirmative we must find that while engaged in the investigation of an excise offence an Excise Officer is a Police Officer. According to Section 74(3), Excise Act:

For the purposes of Section 156, Criminal P. C, 1898, the area to which an Excise Officer empowered Under Section 73(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.

63. In other words an Excise Officer is to be deemed to be an officer in charge of a Police Station for the purposes of the investigation of an offence into which he is enquiring. He has not merely the powers of a Police Officer, but the status of a Police Officer for the time being:

When a thing is to be 'deemed' something else, it is to be treated as that something else with the attendant consequences (*Cane, J., in Reg. v. Norfolk County Council*⁵¹)

64. It follows that, since for investigation purposes the Excise Officer is to be deemed a Police Officer, a confession made to him by the accused in the course of an investigation of an offence must be deemed to be a confession made to a Police Officer and as such

⁵¹(1891) 60 LJQB 379)

inadmissible in evidence. I would however not go further than this and hold that in any

circumstances a confession made to an Excise Officer is inadmissible in evidence. Genuine admissions made by accused persons are a very important aid in the administration of justice and Under Section 21, Evidence Act, such admissions are relevant and may be proved as against the person who makes them.

65. Under Section 24 of the Act a general exception is made in the case of confessions caused by inducement, threat or promise proceeding from a person in authority. Section 25 makes further special exception in the case of confessions made to Police Officers. No doubt through these exceptions, (however good the grounds may be for making them), the Courts in some cases are deprived of the advantage of a genuine confession, which would have greatly simplified the right decision of the case. In these circumstances the Courts should, I think, be very careful not to stretch the words used by the legislature to cover cases which do not come strictly within the terms of the section. Had the legislature intended to include confessions made to persons other than Police Officers surely it would have introduced words to that effect in the section, at least after Excise Officers were given police powers. I would suggest that there was no need to do so because Section 74, Excise Act, gives Excise Officers while engaged in the investigation of an excise case the status of a Police Officer for purposes of the investigation of the case, and the recording of a confession would be part of the investigation:

Where the words of a statute are themselves precise and unambiguous those words are to be taken in their ordinary meaning.

66. There is, I think, no ambiguity in the term Police Officer, and therefore it was not considered necessary to give any definition of the term in the Evidence Act or in any other statute; we have simply to take the words in their ordinary meaning. Sir Richard Garth in the case of *Queen v. Hurribola Ghunder Ghose*⁵² says:

I consider that the term Police Officer should be read not in any strict technical sense, but according to its more comprehensive and popular meaning. In common parlance and amongst the generality of people the Commissioner and Deputy Commissioner of Police are understood to be Officers of Police or in other words Police Officers quite as much as the more ordinary members of the force.

67. This however is by no means authority for holding that an Excise Officer is a Police Officer merely because he has for the investigation of excise cases certain powers of a Police Officer. No one in my experience regards an Excise Officer as a Police Officer, and in none of the decisions on this point has it been suggested that an Excise Officer is called a Police Officer by any class of the community. The Bombay Full Bench decision in *Nanoo Sheikh Ahmed v. Emperor*⁵³, is based on the fact that Excise Officers exercise police powers in excise cases and not on the ground that they are generally regarded as Police Officers. A village chowkidar on the other hand is a village police officer and is referred to as such in the Police Act 5 of 1861 and in other previous Acts,

but in no statute so far as I am aware has an Excise Officer been referred to as a Police Officer, in fact in the Excise and Opium Acts and in the Evidence Act a Police Officer is distinguished from

⁵²(1876) 1 Cal 207

⁵³ AIR 1927 Bom 4 : ILR 1927 51 Bom 78

a Revenue Officer. I therefore agree with the view taken in the cases of *Ruhumali v. Emperor*⁵⁴ *Ah Foong v. Emperor*⁵⁵ *Haribhanjan Sao v. King Emperor*⁵⁶, *Tura Sardar v. Emperor*⁵⁷ *Matilal Kalowar v. Emperor*⁵⁸, as well as *Radha Kishun Marwari v. King-Emperor*⁵⁹ that an Excise Officer is not a Police Officer. I would accordingly limit the application of Section 25, Evidence Act, in the case of an Excise Officer to a confession made to him in the course of an investigation of an offence by virtue of Section 74(3), Excise Act, which gives him the status of a Police Officer for the purposes of the investigation. My answer to the reference is in the affirmative.

S. K. Ghose, J.

68. The question referred to the Full Bench is this:

Is an Excise Officer, who in the conduct of investigation of an offence against the excise exercised the powers conferred by the Code of Criminal Procedure upon an officer in charge of police station for the investigation of a cognizable offence, a police officer within the meaning of Section 25, Evidence Act?

69. The learned Advocate General has pointed out that the question as formulated in this form does not, strictly speaking, arise out of the appeal which is against a conviction Under Section 9, Opium Act, and not one under the Bengal Excise Act 5 of 1909. He has however said that in view of the importance of the matter he would not press this technical objection and he has invited us to give our opinion on the question as stated above. The decision of this question turns upon a construction of Section 25, Evidence Act; in particular, upon a construction of the words "police officer" occurring therein. Sections 25, 26 and 27 were embodied in the Evidence Act from the Criminal Procedure Code, Act 25 of 1861. This is how Stephen puts the matter:

I may observe upon the provisions relating to them that Sections 25, 26 and 27 were transferred to the Evidence verbatim from the Code of Criminal Procedure, Act 25 of 1661. They differ widely from the law of England, and were inserted in the Act of 1861 in order to prevent the practice of torture by the police for the purpose of extracting confessions from persons in their custody. (Stephen's Introduction to the Evidence Act, p. 171.)

70. The provision in Section 25 is definite and explicit; for our purpose the expressions "police officer" and "any offence" are worthy of note. The latter expression is not confined to any thing which is an offence under a particular Act or which was an offence in 1872: it applies to all offences including those created by later Acts. Then what is a police officer? The learned

Advocate General has contended that a police officer is simply a member of the police force whose duties are prescribed by Section 23, Police Act (Act 5 of 1861). He has strongly contended that it is unnecessary for us to look to the intent of the provisions regarding confessions when the words "police officer" are plain enough. It is however noteworthy that these words are not defined in the Evidence Act. The explanation, for instance, to Section 26 excludes certain persons from the category of

⁵⁴ AIR 1918 Cal 138

⁵⁶ AIR 1927 Cal 527

⁵⁸ AIR 1932 Cal 122 : 140 Ind. Cas. 257

⁵⁵ AIR 1919 Cal 696

⁵⁷ AIR 1980 Cal 710

⁵⁹ AIR 1932 Pat 298

"Magistrate;" but no such restriction or limitation is given with regard to the words "police officer." The Police Act of 1861 also did not define "police officer." The preamble shows that the Act was intended to re-organize the police and make it a more effective instrument for the prevention and detection of crime. The word "police" shall include all persons who shall be enrolled under this Act (Section 1). The entire police establishment shall be deemed to be one police force and shall consist of such number of officers and men etc., (Section 2). Police officers are to get certificates of appointment (Section 8) and the form of the certificate states that the officer is vested with the powers and functions and privileges of a police officer.

71. Police officers enrolled under this Act are not to exercise any authority except what is provided for by the Act and by any Act which shall hereafter be passed for regulating criminal procedure (Section 20). But it is recognized that there are already village police officers who are not affected by the Act (Section 21). The learned Advocate General has referred to Section 23 as showing the powers of police officers, but that section really prescribes the duties. Lastly, the Act shall not by its own operation take effect in any place (Section 46). The Criminal Procedure Code of 1861, Act 25, does not define police officer, but it contains provisions regarding the duties and powers of a police officer in the matter of prevention, detection, and investigation of crime.

72. The later Code merely defines "officer in charge of a police station." The Calcutta Police Act (Act 4 of 1866) does contain a definition of police officer, but it is merely that it shall mean "any member of the Calcutta Police Force.

73. It also prescribes the duties (Section 10-A) which arising out of the exigencies of city, are not identical with the duties prescribed by Section 23 of Act 5 of 1861. No doubt the legislature of 1872 was cognizant of the duties and powers of a police officer of that period. But it is noteworthy that it used the words " police officer " in Section 25, Evidence Act, without any qualifying expression. By a later provision in Section 125 which was passed in 1887 a reference was made to "revenue officer" as distinct from " police officer." But in Section 25 the expression police officer " remained without any differentiation or amendment. On the other hand, the section applies to a person accused of any offence. Since 1872 not only have new offences been created by later Acts, but new bodies of officers have been created who are vested with powers of police with regard to these offences. Would that make any difference to the application of the section to those officers? I think not.

74. The scheme of the Act with regard to confessions is that a confession is testimonially untrustworthy unless it is perfectly voluntary, and in the case of a confession made to a police officer, the law goes so far as to presume that it is testimonially untrustworthy for reasons which are well understood and justified by experience. But, says the learned Advocate General, we cannot look to the intent of the provision, because the term "police officer " is not ambiguous. But his contention that a police officer means simply one who is a member of the regular police force will not bear examination. Courts all over India have agreed in upholding the dictum of Sir Richard Garth, C.J., in the case of *The Queen v. Hurribole Chunder Ghose*⁶⁰ that the term "police officer" should be read not in any strict technical sense but according to its more comprehensive and popular meaning. It

⁶⁰(1876) 1 Cal 207

has been expressly held that Section 25 is not to be restricted to officers of the regular police force: *Queen-Empress v. Salemuddin Sheikh*⁶¹

75. For instance it was applied to the case of a police patel: *Queen.Empress v. Bhima*⁶² and *Queen-Empress v. Kamalia* (1886) 10 Bom 595, to the case of a chowkidar in *Queen-Empress v. Salemuddin Sheikh* (1899) 26 Cal 569, besides to police officers of Native States, *Queen-Empress v. Nagla Kala* (1898) 22 Bom 235. Once it is found that the term cannot be confined to officers who are enrolled as members of the regular police force under one or other of the so-called Police Acts, the correct judicial interpretation would be to include persons, who exercise the powers, or are charged with the duties, of the police. It is not necessary that one should find an exhaustive definition of the term "police officer." It is enough for our purpose if we can find what the term should include, namely, whether it should include a person who exercises the powers of a police officer in a particular case. There is no reason why such a person should not be deemed to be a police officer within the meaning of the section. This is quite in keeping with the plain words of the section. The Golden Rule of legal interpretation has been stated thus:

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance and inconsistency, but no further. (Beal's Cardinal Rules of Legal Interpretation, 3rd Edn., p. 343, et seq.)

76. Where the authorities are collected, it does not seem to me that the interpretation which I have sought to put upon Section 25 goes contrary to this maxim. With great respect the opposite contention results in a stilted, narrow, and superficial view of law, by the application as it were of a copy book maxim. The words "police officer" may be plain, but they are not defined in the Evidence Act. The contention that the term applies only to members of the police force is not borne out by authority. On the other hand it is quite consistent with the scheme of the Act that a person who exercises the powers of a police officer should be hit by the prohibitive provision in

Section 25.

77. What is the position of an excise officer in an excise case? We find that in an excise case an excise officer is the real police officer. He is so by statute. In practice he is often the only police officer in the case. The provisions of the Bengal Excise Act of 1909 make it quite clear that an excise officer exercises all the powers of the police for the prevention and detection of excise offences. Section 73 prescribes that certain excise officers may investigate offences under the Act. If read with Rule 35, Bengal Excise Manual, 1918, p. 108, it shows that an Excise Inspector and an Excise Sub-Inspector are empowered to investigate any offence punishable under the Act. Section 74 prescribes the powers and duties of excise officer investigating an offence and it says expressly that he may exercise any of the powers conferred upon a police officer making an investigation or upon an officer in charge of a police station by Sections 160 to 171, Criminal P. C., 1898. Sub-section (3), Section 74 states that for the purposes of Section 156, Criminal P. C., the area to which an excise officer so empowered is appointed shall be deemed to be police station and such officer shall be deemed to be the officer in charge of such station. Section 81,

⁶¹(1899) 26 Cal 569

⁶²(1893) 17 Bom 485

Sub-section (3) also refers to such officers as being deemed to be police officers. The learned Advocate General has contended that the expression "deemed" shows that the two are not identical. It may be that this is a statutory fiction, but it is sufficient to show that in so far as investigation into an excise offence is concerned an excise officer is virtually the same thing as a police officer.

78. In other cases, for instance in a murder case, an excise officer may be no more than a member of the public. But that is not the point. As I have said before, in an excise case excise officers are the police. There is no reason why they should not be police officers within the meaning of Section 25, Evidence Act. To hold otherwise would be to stultify the object of that provision. There is no question of hampering investigation by an excise officer for it should be no more difficult for him than it is for a member of the regular police to send a confessing accused to a Magistrate in order to have his confession properly recorded. It is desirable that that should be so. Experience shows that even a confession which is recorded by a Magistrate with all the formalities and safeguards that the law provides has sometimes to be thrown out as being not a voluntary confession and great is the risk in the case of an extra judicial confession before an officer exercising police powers, since such confession is more often than not recorded in a slipshod and negligent manner.

79. In the Calcutta High Court there is a number of cases in which the view has been taken that an excise officer is not a police officer for the purpose of Section 25, Evidence Act. These cases are *Rukumali v. Emperor*⁶³ *Ah Foong Chinaman v. Emperor*⁶⁴ *Harbhanjan Sao v. King-Emperor*⁶⁵, *Tura Sardar v. Emperor*⁶⁶ and *Matilal Kalwar v. Emperor*⁶⁷, In none of these cases however the question of an excise officer exercising powers of a police officer was discussed and it does not seem that in any of these cases except the last mentioned the attention of the learned Judges was

directed to the material provisions of the Excise Act. In the case of *Tura Sardar v. Emperor*⁶⁸ it was held that the question did not arise having regard to the facts of the case. In the case of *Matilal Kalwar v. Emperor*⁶⁹, the case of *Ibrahim Ahmed v. Emperor*⁷⁰, was not followed, because in that case it was not thought necessary to refer the matter to a Pull Bench for decision. In the case of *Ibrahim Ahmed v. Emperor*⁷¹, the position of an excise officer with reference to his powers under the Excise Act Was discussed and I adhere to the opinion I expressed therein. But on the facts of the case it was found necessary to make a reference to the Full Bench. A Full Bench of the Bombay High Court in the case of *Nanoo Sheikh Ahmed v. Emperor*⁷², decided the matter upon the principle with which I respectfully agree. That was a decision under the Bombay Abkari Act (Bombay Act 5 of 1878) which provides that certain abkari officers are empowered to investigate offences punishable under the Act and these powers are similar to the powers which are conferred on excise officers by the Bengal Excise Act.

80. It was held that an abkari officer who in the conduct of an investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Criminal Procedure Code, 1898, upon an officer in charge of a police station for the investigation

⁶³ AIR 1918 Cal 138

⁶⁵ AIR 1927 Cal 527 : (1927) ILR 54 Cal 601

⁶⁷ AIR 1932 Cal 122

⁶⁴ AIR 1919 Cal 696

⁶⁶ AIR 1980 Cal 710

⁶⁸ AIR 1980 Cal 710

⁶⁹ AIR 1932 Cal 122 : 140 Ind. Cas. 257

⁷¹ AIR 1931 Cal 350 : (1931)ILR 58 Cal 1260

⁷⁰ AIR 1931 Cal 350 : (1931)ILR 58 Cal 1260

⁷² AIR 1927 Bom 4 : ILR 1927 51 Bom 78

of a cognizable offence is a police officer within the meaning of Section 25, Evidence Act. The views expressed in this case and also in the cases of *Ibrahim Ahmed v. King Emperor*⁷³, and *Queen-Empress v. Sa-lemuddin Sheikh*⁷⁴ were dissented from by a Full Bench of three Judges of the Patna High Court in the case of *Radha Kishun Marwari v. King Emperor*⁷⁵ In that case the Judges agreed with the principle laid down in the case of *Queen v. Hurribole Chunder Ghose*⁷⁶ namely that the term 'police officer' should not be read in any technical sense and Fazl Ali, J., held that the definition of the term 'police officer' in Section 1, Police Act was not exhaustive and the term was not confined merely to persons enrolled under the Police Act. But Agarwala, J., held that no person was a police officer unless he was enrolled in, or appointed as a member of the police force, or was declared by statute to be a member of that force. There was a reference to police officer in its popular meaning, but as to this there may be some controversy.

81. The term 'popular' is elastic and large discretion is implied in its interpretation. Even in its popular meaning an excise officer may not be distinguishable from the police, for it is a common thing for people to refer to excise officer as 'excise police' or 'excise daroga' or 'abkari daroga' and so forth, and from the point of view of an accused person one certainly would not make a distinction as between an excise officer and a police officer. All this cannot be dismissed as a popular misconception, for it is no misconception at all. On the other hand it is in keeping with the Oxford Dictionary definition of the Word 'police' which is quoted in the judgment just delivered by my learned brother Mu-kerji, J. It may be that the power to investigate is not a complete test, because a police constable has no power to investigate ; one is landed in this sort of difficulty in trying to get at an exhaustive definition of the term 'police officer.' Nor should the

case of a person who has been directed to inquire into a case Under Section 202, Criminal P. C., create any difficulty on the ground that by Sub-section (2) such a person shall exercise the powers of an officer in charge of a police station, for such a person would not have the power to arrest without warrant ; he is only to investigate for "the purpose of ascertaining the truth or falsehood of the complaint" and for that purpose to take evidence, as for instance, Under Section 161 of the Code, and not to prevent or detect a crime or apprehend the criminal.

82. The Patna case was one under the Dangerous Drugs Act, 2 of 1930, Sections 29 and 30 of which provide for certain police powers. There is however no reference to this in the judgment. The case of *Maung San Myin v. King.Empero*⁷⁷r was decided by a Single Judge and he also did not discuss the effect of the powers conferred upon an excise officer. In so far as these cases lay down that an excise officer is not a police officer within the meaning of Section 25, Evidence Act, I respectfully disagree with the decision. It may be noted that in *Jas Bahadur Thafa v. Emperor*⁷⁸ which was decided later by a Bench of the Rangoon High Court the wider interpretation of the term police officer based on the dictum of Garth, C.J., was followed. A distinction has been sought to be made in the case of an officer acting under the Opium Act (Act 1 of 1878) on the ground that the powers conferred by that Act are not so extensive as those conferred by the Bengal Excise Act. This argument was made without reference to the Opium (Bengal Amendment) Act of 1933. But even under Act 1 of 1878 the officer is no less interested in getting a conviction ; he has even a special interest in

⁷³ AIR 1931 Cal 350

⁷⁵ AIR 1932 Pat 298

⁷⁷ AIR 1930 Rang 49

⁷⁴(1899) 26 Cal 569

⁷⁶(1876) 1 Cal 207

⁷⁸ A.I.R. 1930 Bang 227

the fines imposed by the Court: vide Section 13. No doubt this Act does not contain a provision similar to Section 74, Bengal Excise Act, but Section 14, Opium Act provides that either from personal knowledge or from information an officer may enter into any place, in case of resistance, break into it, seize opium and all materials used in the manufacture thereof, detain and search and if he thinks proper arrest any suspicious person. Section 15, gives him the power to seize in open place and to detain, search and arrest any suspicious person. By Section 20, the officer is to forward without delay to the officer in charge of the nearest police station the person arrested or the thing seized. But the time is apparently left to some extent to his discretion according to the circumstances and by Section 21 he is required to make a report within 48 hours.

83. Practically therefore in so far as the investigation is concerned an officer under the Opium Act exercises the powers of a police officer. In this respect he is in no way inferior to village chowkidar or patel who has been held to be police officers Under Section 25, Evidence Act. So far with regard to Act 1 of 1878. But the effect of the amendment by the Bengal Act 5 of 1933 is to bring the position in Bengal more completely into line with that under the Excise Act. By Section 12, Amendment Act the Local Government may authorize any class of officers of the Excise, Police or Customs Department to investigate offences and to grant bail to persons as arrested. They become the investigating police, with the necessary police powers. It is also enacted that the provisions of Section 162, Criminal P. C. shall apply to statements of witnesses

as recorded, and also that the provisions of Section 172 of the Code shall apply to the diary of proceedings in investigation which is required to be kept. No doubt excise, police and customs officers are distinctly mentioned, but the distinction in nomenclature is purely departmental. In respect of their powers they are all the same. In practice too there is no difference from the point of view of an accused person between an officer acting under the Opium Act and an officer under the Excise Act. In the view that I have taken it seems to me that no exception should be made in the case of an officer under the Opium Act. He also is a police officer within the meaning of Section 25, Evidence Act. The non-application of this section in excise and opium cases has been, in my experience, very harmful and the practice should not be continued on the plea that it is in accordance with law which, in my opinion, it is not.

84. In my judgment the answer to the question referred to the Full Bench is that an excise officer who in the conduct of investigation of an offence against the excise exercises the powers conferred by the Criminal Procedure Code upon an officer in charge of a police station for the investigation of a cognizable offence is a police officer within the meaning of Section 25, Evidence Act. With reference to the larger question, raised I would say that an officer investigating an offence under the Excise Act., 5 of 1909 or under the Opium Act, 1878 is a police officer within the meaning of Section 25, Evidence Act.

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