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firm's partners had in the meantime brought to the scene. This happened at about 9 p.m. and as the Customs officials were unable to deal with the legal arguments of the lawyers and could not also, at that late hour, consult the Government Solicitor, which they wanted to do, they left the files in one of the ante-rooms and sealed its doors. It is alleged that many of the files contained incriminating material, but when on the next day the door was unlocked, it was found that a large number of the files had disappeared. The search was continued and concluded at 10-15 a.m., the search party taking away with them the two bundles of sharkskin and velvet and seven files which were allegedly all the files left.

3. On that very day, i.e. on the 19th May, 1955, one Sri D. G. Banerji, Rummaging Inspector (Intelligence), issued a notice on Sri S. M. Jajodia, one of the partners of the firm, under Section 171-A(2) of the Sea Customs Act. The notice said that on checking the files it had been found that as many as 52 files, the numbers of which were given, were missing and Sri Tajodia was asked to produce those files within a week. A second notice under no particular provision of law was also issued on the same day on Sri S. M. Jajodia by one Sri C. Basu, Superintendent, Preventive Service and by that notice he was asked to produce by the 23rd May, 1955, any evidence which he might have in his possession to show that the sharkskin and velvet had been legally imported into India or if his firm had not imported the goods but purchased them from a third party, such evidence as he might have in his possession of the purchase. On the next day, i.e. the 20th May, a third notice under Section 171-A of the Sea Customs Act was issued by one J. Smith, Chief Inspector, to the four partners of the firm and they were asked to appear before Smith on the 21st May, 1955 at 10 a.m. On the same day, a further application for a search warrant with respect to the firm's godown at 16 Mangoe Lane, Calcutta, was made to the Chief Presidency Magistrate by the same Assistant Collector of Customs and Superintendent, Preventive Service and a warrant was issued forthwith. Armed with that warrant, the Customs officials went to 16 Mangoe Lane and caused the godown to be opened for holding a search, but according to them, the members of the firm asked for a day's time to produce the documents relating to the importation of the goods stored in the godown and then asked for further time till the 23rd May, 1955, which was granted. According to the Respondents, the Customs officials first went to the godown at 16 Mangoe Lane on the 18th May, before they had obtained a search warrant, but this the Customs officials denied. On the 23rd May, 1955, a fourth notice was issued by Sri D. G. Banerji, Rummaging Inspector (Intelligence) to the firm under Section 171-A of the Sea Customs Act and by it the firm and each and all of its partners individually were asked to produce forthwith all the documents relative to the importation, purchase or sale of the goods lying in the godown at 16 Mangoe Lane.

4. On the 21st May, 1955, Messrs. N. C. Bural and Pyne, Solicitors, acting for the Respondents, addressed a notice to the Collector of Customs, sending copies thereof to the Chief Inspector, the Superintendent, Preventive Service and the Rummaging Inspector (Intelligence) and asked for the withdrawal of the notice on S. M. Jajodia, requiring him to produce the missing files and the notice on all the partners of the firm requiring them to attend before Smith on that very day. It was said that the notice was illegal for various reasons and particularly for the reason that the members of the firm were in the position of accused persons. Apparently, no regard was paid to this notice. On the 23rd May, 1955 the Respondents moved this Court against the Appellants under Article 226 of the Constitution and asked for writs of mandamus and certiorari with respect to the four notices and also a writ in the nature of mandamus for a return of the goods and documents seized. It appears that by the time the petition had been prepared, the fourth notice

had not been served and it was included in the petition subsequently by means of a supplementary affidavit affirmed just before the petition was moved in Court. Bose J., before whom the application was made, issued a Rule Nisi, directing the Appellants to show cause why notices issued on the Respondents should not be quashed by a writ of certiorari and why they should not be directed by a writ of mandamus to cancel or to forbear from giving effect to the notices as also why they should not be directed to refund to the Respondents the goods and the documents seized. The Rule came up for hearing before Sinha J. who made it absolute in part. The learned Judge held that the search held by the Appellants and the seizure of goods and documents by them at the search had been perfectly legal and so was the notice requiring S. M. Tajodia to produce such evidence as he might have in his possession to show that the goods seized at the search had been legally imported. The learned Judge, however, held that the remaining three notices were void, inasmuch as they were violative of the Constitutional guarantee against self-incrimination and accordingly he directed the issue of a writ of certiorari, quashing the orders contained in them and also the issue of the writ of mandamus, requiring the Respondents to forbear from giving effect to them. It is against that order that the Customs officials have appealed and the partners of the firm preferred a cross-objection.

5. To take the appeal first, the case of the Respondents with respect to the notices, which the learned Judge has accepted, is based on Article 20(3) of the Constitution of India. They contend that the Appellants accused them of various offences and were then seeking to compel them by the notices to be witnesses against themselves. According to them and the learned Judge, Section 171-A of the Sea Customs Act, in so far as it enables the Customs authorities as they think, to compel a person accused of any offence to give evidence against himself or to produce documents for that purpose, is inconsistent with Article 20(3) and consequently void and further, the notices issued under the purported authority of Section 171-A were of no effect. The only question in the appeal is whether this view of Section 171-A of the Sea Customs Act is correct or even if it be correct, whether the impugned notices amounted to an exercise of testimonial compulsion on persons accused of offences.

6. In aid of their contention, the Respondents rely on the terms of the search warrants and those of the notices issued to them. It appears that in his application for search warrants, the Assistant Collector of Customs and Superintendent, Preventive Service stated that he had reason to believe that dutiable and/or prohibited goods were secreted in the premises mentioned by him and accordingly he asked for the issue of a warrant for a search of the premises for the goods and the documents relating thereto. The search warrants were issued over the signature of the Chief Presidency Magistrate and they state what information had been laid before him. It is stated by the Magistrate that information had been laid before him of illegal importation of goods in contravention of the Sea Customs Act, the Imports and Exports (Control) Act and the Foreign Exchange Regulation Act and it had been made to appear before him that production of the illicitly imported goods and the documents appertaining to them was essential to the enquiry to be made into the suspected offences. There can be no doubt that the information of which the search warrants speak was laid before the Magistrate by the Customs authorities. The notice of the 19th May, 1955, which the learned Judge has held to be bad, contains no accusation of any offence, nor does the notice issued by J. Smith on the 20th, May. The other notice of the 19th May, which the learned Judge has found to be legal, states that there were reasonable grounds to believe that the goods seized at the search had been illegally imported into India without payment of the proper customs duty and without production of a valid import trade control license and the

notice then proceeds to say under what provisions of law importation of goods without an entry being duly made and proper duty being paid and without a valid import license is punishable. The provisions referred to are sections 3(2) and 4 of the Imports and Exports (Control) Act and Sections 19, 86, 167(8) and 167(39) of the Sea Customs Act. The notice of the 23rd May, states that the Respondents had up to that time failed to satisfy the Customs authorities that the goods stored in the godown at 16, Mangoe Lane had been legally imported. The first notice of the 19th May, asks S. M. Jajodia to produce all the missing files, the notice of the 20th May asks all the partners to appear before the Chief Inspector of Customs and the notice of the 23rd May, asks the turn and each one of its partners to produce all the documents relative to the importation of the goods stored in the godown at 16, Mangoe Lane. All these notices were issued under Section 171-A of the Sea Customs Act which requires any person, summoned by a Customs Officer to produce documents to produce them or cause them to be produced, as may be directed and any person summoned to give evidence, to state the truth on pain of the penalties prescribed by Sections 193 and 228 of the Indian Penal Code. The Respondents contend and the learned Judge has found, that the statements contained in the search warrants and two of the notices charge them with acts and omissions which amount to offences and therefore they cannot be validly compelled, either under Section 171-A of the Sea Customs Act or otherwise, to be witnesses against themselves by giving evidence before the Customs authorities, in the course of which they will be bound to tell the whole truth, or by producing all the documents before them, which may include incriminating documents.

7. The first question is whether the Respondents were accused of an 'offence' or 'offences' within the meaning of Article 20(3). The learned Judge has pointed out that the term 'offence' has not been defined in the Constitution and he has held that the definition contained in Section 2 (27) (Section 3(38) ?) of the General Clauses Act, under which 'offence' means 'any act or omission made punishable by law for the time being in force', will apply. He has accordingly taken the view that even breaches of the Customs laws entailing a monetary penalty or forfeiture of the goods concerned would be offences as contemplated by Article 20(3). This would seem to be correct, in view of Article 367(1) which makes the General Clauses Act applicable to the interpretation of the Constitution, unless of course the context otherwise requires. But the Appellants contended that in the case of *Maqbul Hossain v. State of Bombay*[1], the Supreme Court had held that what Article 20(3) contemplated were criminal offences and not a mere revenue offence. I agree with the learned Judge that the observations made in Maqbul Hossain's case, which was concerned with the plea of double jeopardy and therefore primarily concerned with clause (2) of Article 20, are not decisive as to the true intendment of clause (3). Ineed not, however, dwell on this point further, because the Appellants' contention can be disposed of by another answer. In the later case of *M. P. Sbarma v. Satish Chandra*[2]. the Supreme Court held that the protection afforded by Article 20(3) was not available to a person accused of an offence merely with respect to the evidence to be given in the court room in

[1]AIR 1953 SC 325
[2](1954) SCR 1077: (AIR 1954 SC 300)

the course of a trial, but it was also available to him at previous stages, if a formal accusation had been made of the commission of an offence which might in the normal course result in prosecution. Evasion of prohibitions or restrictions regarding the import of goods or of any duty chargeable thereon is now a criminal offence under section 167(81) of the Sea Customs Act and punishable, on conviction before a Magistrate with imprisonment or fine or both. Contravention

of any order made under the Imports and Exports (Control) Act is similarly punishable under Section 5 thereof, without prejudice to any confiscation or penalty to which the offender may be liable under the Sea Customs Act. Again, prohibition or restriction under the Imports and Exports (Control) Act is to be deemed by virtue of Section 3(2) thereof to be prohibition or restriction under Section 19 of the Sea Customs Act and since it is also provided that all the provisions of the latter Act shall have effect accordingly, violations of the former Act would be, it seems, punishable under Section 167(81) of the latter Act. Contraventions of the Foreign Exchange Regulation Act are also punishable under Section 23 (1) thereof with imprisonment or fine or both and like restrictions under the Imports and Exports (Control) Act, those imposed by Sections 8(1), 8(2), 12(1) (a) and 13(1) of this Act as well are to be deemed to be restrictions imposed by Section 19 of the Sea Customs Act with the result that all provisions of that Act shall have effect accordingly. The Appellants contended that in holding the searches and issuing the notices, the Customs authorities had acted only as Administrative officers, which in fact they were and the offences with which they had concerned themselves were only offences in the revenue sense, their sole object being collection of duty and forfeiture of goods, illegally imported. This contention does not appear to me to be tenable. It is true that the second notice of the 19th May, referred only to certain provisions of the Sea Customs Act providing for forfeiture or penalty, viz., Section 367, items (8) and (39), but from that circumstance it can by no means be said that their enquiry was going to be limited to the pursuit of customs duties. The information referred to in the search warrants was information of illegal importation of goods in contravention of the three Acts, which was said to be the offence suspected. There is no reason at all to think that this contravention was merely contravention of the provisions for the payment of duty and not of the prohibitions or restrictions as to import. But even if only evasion of duty was contemplated, there is no reason to think that the enquiry to be made would not be an enquiry as to the commission of criminal offences as well, as constituted by such evasion. It is true that the search warrants do not name any individual or any particular party, but the applications for them stated that the applicants believed that dutiable and/ or prohibited goods were secreted in the premises proposed to be searched and, therefore, there can be no doubt that the Department's suspicion was against the occupants of the premises. The acts alleged in the second notice of the 19th May, again, were illegal importation without payment of proper customs duty and without production of a valid import trade control license, both of which would be punishable as criminal offences. The proof called for by the notice was proof of not only payment of proper duty, but also possession of a valid import license. The Appellants relied strongly on the circumstance that the Customs authorities could not themselves administer any oath, nor could they punish any criminal offences. It is, however, important to remember in this connection that cognizance of an offence under Section 167 (81) can be taken only upon the complaint in writing of the Chief Customs officer or any other officer of Customs authorized by him, but not lower in rank than an Assistant Collector of Customs and, similarly, no cognizance of any offence punishable under Section 5 of the Imports and Exports (Control) Act can be taken except upon the complaint of a Customs Collector or an officer of the Customs authorized by him. Prosecutions for offences punishable under Section 23 of the Foreign Exchange Regulation Act lie only on the complaint of a person authorized in that behalf by the Central Government or the Reserve Bank, but it is Collectors, Deputy Collectors and Assistant Collectors of Customs who have been authorized for the purpose by the Central Government by a notification, dated 12-1-1952. It is thus the higher officers of the Customs Department and none others who can initiate a prosecution for violations of either the Sea Customs Act or the Imports and Exports (Control) Act, or the Foreign Exchange Regulation Act. In view of, these circumstances, it appears to me that from the accusations made

in the search warrants at the instance of the Customs authorities and those made in one of the notices by the Customs authorities themselves, accusations of criminal offences cannot be excluded; and if accusations at a pre-trial stage, such as may in the normal course result in prosecution, attract the protection of Article 20 (3), as the Supreme Court has held, I am of opinion that the requirements of the Article in this regard were satisfied in the present case.

8. In the above view, it is not necessary to consider the Appellants' contention that penalty is not the same thing as fine and that the acts or omissions charged against the Respondents which the Sea Customs Act visits only with penalties under items (8) and (39) of Section 167, Sea Customs Act are not criminal offences. They cited the decision in *Brown v. All Weather Mechanical Grouting Company Limited*[3], where it was held that a breach of an excise law, punishable with a penalty, could not be regarded as a criminal offence, though the word 'offence' had been used in the relevant Act to describe it. "A failure to do something prescribed by statute", observed Goddard, L. C.J., "may be described as an offence although Parliament imposes in respect of it not a criminal sanction but a mere pecuniary sanction which is recoverable as a civil debt". The learned Lord Chief Justice pointed out that the same Act contained another section which required the owner of a motor vehicle, which had been used for a purpose other than that for which it was licensed, to give certain information if required to do so by the police and that failure to give such information, when called upon to do so, was made an offence punishable on a summary conviction with a fine. That, it was said, was a criminal offence. The Appellants contended that although the acts or omissions enumerated in Section 167 of the Sea Customs Act were described as offences, the section made the persons, guilty of such acts or omissions, liable only to penalties and that therefore no criminal offence was contemplated by the section. This contention proceeded on a clear misreading of Section 167 because, like the English Act considered in the case cited, Section 167 itself contains several provisions for conviction before a Magistrate and punishment with imprisonment or fine or both. Those punishments are also described as penalties. It is true, however, that penalties imposed by the Customs Officers themselves are not fines, as would appear from Section 193 which requires Magistrates, approached for the realization of penalties, to enforce their payment as if they were fines inflicted by themselves. Regarded as impositions by the Customs Officers, the penalties are thus not fines and it may be that the sanction imposed by the law on the acts or omissions concerned are not criminal sanctions. This, however, is not material for our present purpose, because as I have already pointed out, the acts or omissions which were charged against the Respondents are criminal offences under another item of Section 167 and some of them are also criminal offences under the Imports and Exports (Control) Act and

[3](1953) 1 All England Reporter 474

the Foreign Exchange Regulation Act. It follows that even assuming that only criminal offences are contemplated by Article 20 (3) of the Constitution, the Respondents were accused of offences within the meaning of the Article.

9. The decision of the Supreme Court in Sharma's case makes it clear that the accusation need not be accusation in a Court of law, but it may be accusation at a stage before the matter has reached the Court. This settles the question of the time of the accusation as contemplated by Article 20 (3), but it has still to be considered what the nature of the accusation need be. In Sharma's case, there was a first information report which was regarded as a formal accusation relating to the commission of an offence which might in the normal course result in prosecution and it was held that a person, so accused, was entitled to the protection of Article 20 (3).

According to the Appellants, it was decided in Sharma's case, that the protection of Article 20 (3) could not be invoked unless there was a formal accusation, but this contention is clearly wrong, because the question whether the protection was available to persons in other situations was expressly left open. If the principle underlying Article 20 (3) be that any forcible and compulsory extortion of a man's own testimony or his private papers, to be used as evidence to convict him of crime, must be forbidden, I can see no reason for holding that the protection of the Article will be available only to a person who has been formally accused or charged. It appears to me that if a man has been named as a person who has committed an offence, particularly by officials who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Article 20 (3) and a situation has arisen in which he can claim protection against being compelled by a coercive process to furnish evidence against himself. As the learned Judge has pointed out, such a stage is the stage at which the protection is most needed. I am accordingly of opinion that the nature of the accusation in the present case was sufficient to make the Respondents accused of an offence within the meaning of Article 20 (3).

10. It cannot rightly be said, as was said by the Appellants, that there can be no question of any testimonial compulsion at the stage of investigation and that the Respondents could complain of being compelled to be witnesses against themselves only if and when the materials, obtained from them, were sought to be used against them at a subsequent prosecution, which they might then resist. As the Supreme Court has pointed out, the language of Article 20 (3) is "to be witnesses" and not "to appear as witnesses" and therefore the extortion of any evidentiary material even at the stage of investigation which may aid the building up of a case against them must be within the condemnation of the Article. Whether statements made to the Customs officials in the course of the present investigation can be used against the Respondents at a subsequent trial, if they are prosecuted, may be doubtful, but it will certainly be possible to use any incriminating documents of which the Customs officials may come into possession. In cases decided under the Fifth Amendment of the Constitution of the United States, the Supreme Court of America has repeatedly held that the protection of the Amendment would be available not only with respect to statements or materials which may themselves be used as evidence, but also with respect to statements or materials which may give a lead to the investigating authorities in searching out other evidence or which may provide them with knowledge of the details of an offence or of sources of information which may supply
other means of conviction (See *Counselman v. Hitchcock*[4], This meaning of the

[4](1892) 142 US 547 : 35 Law Ed 1110

constitutional guarantee against self-incrimination appears to me to be self-evident, because if officers, competent to prosecute a man, can, after telling him that according to their information he has committed an offence, extort oral or documentary testimony from him which may be used directly or indirectly to bring the charge home to him, the guarantee must be a very hollow guarantee indeed. In my view, both as to the time when and the form in which it was made, there was an accusation against the Respondents within the meaning of Article 20 (3) and it was an accusation of several offences which furnished to them the necessary basis for claiming protection against self-incrimination, if, however, any self-incrimination was really going to be enforced.

11. The next question is whether by the notices issued to them, it was being sought to compel them to be witnesses against themselves. The notices were issued under Section 171A of the Sea Customs Act. That section empowers any officer of Customs to summon any person, either to

give evidence or to produce a document. As to the obligations of a person so summoned, sub-section (3) of the section provides as follows:

> "All persons so summoned shall be bound to attend either in person or by an authorized agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be directed."

12. The person summoned under the section is thus "legally bound" by an express provision of law to state the truth and therefore if he makes any statement which is false or which he either knows or believes to be false or does not believe to be true, he will be giving false evidence within the meaning of Section 191 of the Indian Penal Code and will be punishable under Section 193. Indeed, subsection (4) of Section 171A makes every enquiry under the section a judicial proceeding within the meaning of Section 193 of the Indian Penal Code and Section 228. If he tampers with any of the documents he produces, then too he will be punishable under Section 193 of the Indian Penal Code. There is enough compulsion in the terms of Section 171A itself, but when one takes the provisions of the section along with the sanctions imposed by the Indian Penal Code, one must find, so far as these provisions go, the compulsion overwhelming. It follows that if by being compelled to tell the truth, the person summoned under the section is compelled to make a statement which incriminates him, or if by being compelled to produce "all documents", as the Respondents in the present case were, he is compelled to produce a document which shows him as having committed an offence, he is clearly compelled to be a witness against himself. But this, it will be noticed, involves an assumption that the person summoned will be asked questions which he cannot answer truthfully without incriminating himself and that he possesses some documents which will incriminate him, if produced.

13. Coming now to the impugned notices, I find the position regarding the notice of 19-5-1955, somewhat peculiar. By that notice, S. M. Jajodia was required to produce 52 files. It is true that before the notice was issued, the Appellants had already accused the Respondents of offences, as would appear from the statements contained in the search warrants and it is also true that according to the affidavit of S. K. Srivastava, the Superintendent, Preventive Service, some of these files contained incriminating documents. But it is alleged by the Appellants that these files had already been seized by them at the search and locked up in a room and that the notice was issued, because it was found that the files had since been removed. If that allegation be true, I do not think that the protection of Article 20 (3) could be claimed with respect to this notice, because by it Jajodia was not being asked to produce the files in the first instance, but was merely being asked to restore the files of which the Appellants had already come into possession by other means and which had since been removed. The Respondents deny the allegation, but since their case that they were being compelled to be witnesses against themselves by being required to produce these files depends upon a disputed fact, I do not think that it is possible to give the Respondents the benefit of Article 20 (3) on an application under Article 226 of the Constitution. It may, however, be said that even on the Appellants' own case, they were accusing the Respondents of the offence of theft in respect of these files and therefore they could not compel them to be witnesses against themselves by bringing them back. The notice, however, says nothing about removal of the files after seizure, but merely states that on an examination of the number of the last file, it has appeared that there ought to be several other files which the

Appellants had not found. Before the notice was issued, the Appellants had not accused the Respondents of the offence of theft, whatever may have been said in the affidavits subsequently filed in Court and I am therefore of opinion that the Respondents have not made out a case in regard to the impugned notice of the 19th May.

14. The position with respect to the other notices is, in my view, plain. But for the accusations contained in the search warrants and the second notice of the 19th May, I would have held the notice of the 23rd May to be harmless, because all that it says is that the Respondents had so far failed to satisfy the Appellants that the goods stored in their godown had been legally imported and all that it asks for is that the documents relative to the importation of the goods or their purchase or sale may be produced. There were, however, those previous accusations and the demand is for the production of 'all' documents. If any of the documents be incrimination, it is clear that if the Respondents could be and were compelled to produce such documents, they would be compelled to be witnesses against themselves. The notice of the 20th May asked the Respondents to appear before the Chief Inspector of Customs, obviously for the purpose of examination by him. The Respondents would be bound in law to tell the whole truth in the course of their examination and if they had per force to admit anything which incriminated them, they would be compelled to be witnesses against themselves.

15. The next and the more difficult question is whether the notices are void and liable to be quashed or whether the correct view to take is that the Respondents should be left to claim the Constitutional protection in the course of complying with the notices with respect to such of the questions as they may think they cannot answer or such of the documents as they may think they cannot produce without incriminating themselves. The learned Judge has held that the section authorizing the issue of the notices is ultra vires the Constitution and therefore void in so far as it enables the Customs authorities to summon a person accused of an offence either to appear or to produce documents which are likely to incriminate him. With respect, such adivision of the section does not seem to be possible, because the section does not make a separate mention of persons accused of offences and, in so far as it comprises such persons within the expression "any person", it is not severable. If the section is bad in part, it must be struck down as a whole. In the case of *Romesh Thappar v. The Province of Madras*[5], the Supreme Court held that so long as the possibility of a law being applied for purposes not sanctioned by the Constitution could not be ruled out, it must be held to be wholly unconstitutional and void. Indeed, since Section 171A does not mention persons accused of offences specifically, nor says anything about compelling them to answer questions or produce documents which may incriminate them, to say that the section, as applied for summoning such persons for such purposes, is void, is only to say that the section cannot be validly applied in such cases. There is nothing at all in the section which authorises the Customs officials to ask persons accused of offences questions which they cannot answer without incriminating themselves or to compel the production of even incriminating documents by such persons. All that it says is that the persons summoned shall be bound, on their part, to tell the truth in answering the question put to them and to produce the documents asked to be produced, but it does not say anything as to what questions the customs officials will be entitled to ask or what documents they may require to be produced. The correct way of regarding the section, taken along with the constitutional guarantee, is not to hold that it is void, wholly or in part, but to hold that the term "any person", as used in the section, does not include persons accused of offences. Even such a proposition will be too broad, because if a person is summoned to appear before the Customs officials, it by no means follows that he will necessarily

be asked questions which he cannot answer without incriminating himself or if a person is summoned to produce documents, it by no means follows that production of incriminating documents is necessarily asked for. There can be no objection to ask even a person accused of an offence questions by answering which he can clear himself of suspicion or to ask or enable him to produce documents which will prove his innocence. The section, it may be recalled, only provides that any person may be summoned either to appear or to produce specified documents or all documents of a certain description. It would thus seem that no certainty of a violation of Article 20 (3) is inherent in Section 171A of the Sea Customs Act, but that a possibility of its violation may arise only in individual cases in the course of the application of the section. If so, it would seem to be more logical to hold that the section, as such, is not ultra vires, but it cannot be relied on as authorizing extraction of answers or extortion of documents which will incriminate the person summoned, if he has been accused of an offence. To revert to the terms of the section, it only authorizes the Customs officials to summon a person to appear or to summon him to produce documents, but it has not specifically authorized them to compel and answer to incriminating questions or to compel the production of incriminating documents. It is true that the section enjoins the person to tell the truth and the Penal Code makes failure to tell the truth punishable. There appears to be no criminal sanction with respect to non-production of documents except that the documents produced must be genuine. But, in any event, all statutes must yield to the Constitution and therefore it will be correct to hold that Section 171A, as such, is not bad, but the person summoned under its provisions will necessarily be entitled to claim the Constitutional privilege as soon as he is asked to answer a question or produce a document which he cannot answer or produce without incriminating himself, if he has previously been accused of an offence.

16. It is interesting to note in this connection the provision made in American law for compelling incriminating answers or the production of incriminating documents without violating the constitutional guarantee contained in the Fifth Amendment. Under the

[5](1950) SCR 594;(AIR 1950 SC 124)

American Constitution, the privilege against self-incrimination is not limited to persons accused of offences, but may be claimed by any person. The Amendment itself says that protection is available only "in any criminal case", but the Supreme Court has extended its application to quasi-criminal cases and even civil actions. Occasions for claiming the protection of the constitutional guarantee are therefore more numerous in America. If the benefit of the guarantee were to be given in every case, successful investigation of offences would be very seriously prejudiced and, therefore, the Congress as well as the State Legislatures have evolved the plan of passing what are called Immunity Bath Statutes. Those statutes authorize the compulsion of incriminating answers and the production of incriminating documents, but at the same time provide for complete and absolute immunity against future prosecution for any offence which the incriminating answers or the documents may disclose. In effect, the constitutional privilege has to be exchanged for the immunity under such statutes and a person, to whom such a statute applies, can still claim the constitutional privilege only if the immunity provided in the statute is not co-extensive with the constitutional guarantee but of a more limited character. An example of a provision for such immunity can be found in Indian law in the provisions of Section 132 of the Evidence Act which compels a witness to answer all questions even if the answer may incriminate him, but at the same time provides that no such answer shall subject him to any arrest or prosecution or shall be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. This provision applies only to witnesses before a court or

other judicial tribunal. A provision of a different character is to be found in Sections 161 and 175 of the Criminal Procedure Code, the first of which requires any person examined by the police to answer all questions relating to the case under investigation and the second of which requires him to answer all such questions "truly." Both contain an exception and say that the person examined shall be bound to answer only question "other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture". It would have been certainly better if Section 171A of the Sea Customs Act contained an exception of the above character, but since all laws made by the Legislature must be subject to the Constitution, the effect of the section even in the absence of such J an exception is, presume, the same.

17. As far as I have been able to investigate, except the case of *Boyd v. United States*[6]. no other decision of the Supreme Court of America has struck down a law authorizing the examination of all persons or the compulsory production of all documents as invalid. Whenever a person, interrogated by a Grand fury or a court or an investigating commission or asked by one or other of such authorities to produce documents under a provision of a statuteauthorising such interrogation or requisition, has claimed the constitutional privilege, he has been allowed it, if it was found that the answer or the document might really incriminate him, unless there was an immunity statute of a sufficiently broad compass. But the Court has not held the authorizing statute to be bad. It has only held that the statute could not be used in the particular case for the purpose for which it had been sought to be used. In Boyd's case, however, which is a close parallel to the present case on the facts, the 5th section of "An Act to Amend the Customs Revenue Laws", which authorized a court to require the defendant in revenue cases to produce in court his private books, invoices and papers on pain of the allegations of the State's Attorney being taken as confessed was held to be unconstitutional as applied to suits for

[6](1886) 116 US 616 : 29 Law Ed 746

penalties or suits to establish a forfeiture of goods on the ground of non-payment of customs duty. It is to be noticed that not only was the section held to be bad, but it was held to be bad as applied to certain cases, just as in the present case. Boyd's case, however, was an exceptional one and though never dissented from, has subsequently been either sharply criticized or sought to be justified on the very special facts. The facts were that under the 12th section of the Act, if it was found that someone had imported merchandise into the United States by means of a fraudulent or false invoice, affidavit, letter or paper, or by other false means without payment of duty, he was liable to be punished with imprisonment or fine and the merchandise concerned was liable to be forfeited. On the allegation that 35 cases of plate glass had been imported fraudulently and without payment of duty, they were declared forfeited and thereupon certain persons entered a claim for the goods and pleaded that the forfeiture had been wrongly made. In the course of the trial, it became important to show the quantity and value of the glass contained in 29 other cases, previously imported and thereupon the claimants were directed under the 5th section of the Act to produce the invoice with respect to the earlier import. They produced the paper under protest and then claimed the constitutional immunity against self-incrimination. The case was treated as coming under both the Fourth and the Fifth Amendments of the American Constitution and it was held that a compulsory production of a man's private papers in order to establish a criminal charge against him or to forfeit his property amounted to illegal search and seizure within the meaning of the Fourth Amendment and also to a compulsion to be a witness against oneself within the meaning of the Fifth. Although the proceedings were proceedings for forfeiture, it was held that they were in essence criminal and therefore the Fifth Amendment would apply. The decision of the Court was that the notice to produce the invoice, the order by which it was issued

and the law which authorized the order were all unconstitutional and void, the law being void as applied to such cases.

18. If the principle of this decision is followed, there can be no doubt that the order of Sinha J., must be upheld in toto. I do not, however, think that it can be applied, because Section 171A of the Sea Customs Act is a very different kind of provision and it does not say that the Customs officials will be entitled to ask any question they like or require the production of any document whatsoever and that if the person summoned by them does not answer any question put to him or produce any document required to be produced, he will be deemed to be guilty. In my view, full effect can be given to the constitutional guarantee without holding any part of the section to be void. Theprotection to which the Respondents are entitled under Article 20 (3) is a protection against self-incrimination and not protection against anything else. So long as they are not compelled to answer a question by answering which they may incriminate themselves, or compelled to produce an incriminating document, they cannot complain that they have been asked to appear before the Customs authorities or to produce documents. It is hardly possible to proceed in a Customs investigation without making some accusation or expressing some suspicion and it appears to me that if the Customs officials are to be completely debarred from seeking information from the exporters or importers, investigation will be well-nigh impossible. Indeed, the collection of such information may go to the benefit of the persons concerned. I have already held that no relief with regard to the notice of the 19th May can be given to the Respondents. The notice of the 20th May merely asks them to appear, but does not say that they are to appear in order to answer even questions by answering which they may incriminate themselves, nor does the notice of the 23rd May purport to ask them to produce incriminating documents. The notices, as they are, do not seek to enforce self-incrimination. There can be no good reason for protecting the Respondents from appearance before the Customs authorities altogether or from the duty of producing any documents at all. But if in the course of their examination by the Customs authorities, they are asked questions which they feel they cannot answer without incriminating themselves, they will be entitled to take that plea and decline an answer. In the same way, they may produce, in compliance of the notice of the 23rd May, 1955 only such documents which cannot incriminate them and they can decline to produce other documents if they think that they will be incriminating and take their stand on Article 20 (3) of the Constitution. Who is to decide when such a plea is taken, whether it has been justly taken or not, is an interesting question into which we need not enter here. The leading decision on that question is that of Chief Justice Marshall in the case of *United States v. Burr*[7], A number of other decisions will be found collected in the annotation on the report of the case of *Hoffman v. United States*[8], at pages 1129 to 1131. The Respondents, as I have pointed out, can claim no constitutional immunity from being examined at all by the Customs authorities or from being asked to produce any documents of any kind. The only protection they can claim on an application under Article 226 of the Constitution is protection against self-incrimination and such protection can be ensured to them if it is held that while they will be bound to comply with the notices, they will be entitled to claim the right of refusing to answer questions, by answering which, they may think they will incriminate themselves or of refusing to produce incriminating documents. More they, in my view, cannot claim. I would therefore uphold the notices, subject to the reservation as regards compliance with them which I have indicated.

19. If a person accused of an offence refuses to answer a question on the ground that by answering it he will incriminate himself or to produce a document on the ground that it will

incriminate him, he will in a way be admitting his guilt and vet if effect is to be given to Article 20(3) of the Constitution, he will, in effect, be protected from being compelled to furnish evidence of his admitted guilt and protected even by the issue of, if necessary, a writ. This may seem odd, but in balancing the advantages of an effective detection of crime with information collected from all sources, against the observance of civilized standards of enquiry and the upholding of the dignity of man, the framers of our Constitution, like those of the Constitution of America, have given preference to the latter. The objection to an intrusion into a man's privacy or his personal degradation in the course of eliciting evidence of a suspected kind is rooted in the consciousness of peoples who value the liberty of the individual and the right to a protection from such intrusion or degredation has come to be regarded as one of the fundamental rights. It is true that the enforcement of this right may often make detection of crime difficult, but as has been often said, a liberty-loving people will make that sacrifice in order to preserve decencies of State-behavior and the dignity of the individual. "The immediate and potential evils of compulsory self-disclosure", it was observed in the case of *U.S. v. White*[9], transcend any difficulties that the exercise of the privilege may impose on society in the detection and prosecution of crime. While the privilege is subject to abuse and misuse, it is firmly embedded in our constitutional and legal frameworks as a bulwark against iniquitous methods of prosecution".

[7](1807) (CC Va) F Cas No. 14694

[9](1944) 322 U.S. 694: 88 Law Ed 1542

[8](1951) 95 Law Ed 1118

Not always, however, has the privilege received such judicial support. "Indeed today, as in the past", it was said in the case of *Palko v. Connecticut*[10],

> "there are students of our penal system who look upon the immunity as a mischief rather than a benefit and who would limit its scope or destroy it altogether. No doubt there would remain the need to give protection against torture physical or mental............. Justice, however, would not perish if the accused were subject to a duty to respond to orderly enquiry".

The Courts, however, are to take the Constitution as it is and although the growing resourcefulness of criminals or other offenders and the expansion of the ramifications of crime may at times force reflections on the justness of the immunity, yet the only concern of the Courts is to give effect to the policy enshrined in the Constitution. So far as the Constitution assures any immunity to a person accused of crime, the Courts must secure it for him.

20. This disposes of the appeal. On the cross-objection, practically no argument was addressed to us. The complaint is that the warrant for a general search, as was issued in this case, was bad and that the seizure of the goods at the search was unauthorized. There is no constitutional guarantee in India against illegal search and seizure as that embodied in the Fourth Amendment of the American Constitution, but there are sufficient safeguards in Acts of the Legislature. I find no reason in the facts of this case to hold that any of those safeguards was disregarded or that the warrants issued were bad, either in form or in substance. It was said that the warrants authorized the Rummaging Inspector to search for the goods suspected to have been illegally imported and also the relevant documents. It is contended that a warrant expressed in such general terms is not authorized by law and, therefore, the search held on the authority of the warrants issued in the present case was illegal. The whole basis of that argument is Form No. VIII in Schedule 5 to the Code of Criminal Procedure, framed by reference to Section 96, where there is a reference to

specified articles. This form is relied on, because it is provided in Section 172 of the Sea Customs Act that search warrants issued under the section shall be executed in the same way and shall have the same effect as a search warrant issued under the law relating to Criminal Procedure. The section, however, does not say that the search is only to be for specified articles, but authorizes the Magistrate to issue a warrant to the Customs Collector to search for "such goods or documents, that is to say, dutiable or prohibited goods or any documents relating to them which are suspected to be secreted at any place". It is perfectly clear that a warrant for a general search is within the purview of the section. Even if the Criminal Procedure Code is to be regarded, Form No. VIII of Schedule 5 cannot possibly control Section 96 itself because, in the first place, the section contains a specific provision that a general search may be ordered and, in the second place, under Section 555 of the Code, the Forms given in the Schedule are subject to adaptation as the circumstances of a particular case may require. In view of this specific provision of the statute which is not invalidated by anything in the Constitution, it is no use invoking in India the principles laid down in *England in En-tick v. Carrington*[11], The position in India before the Constitution which the Constitution has not altered in this regard was very elaborately considered in a very learned judgment of this Court in the

[10](1937) 302 U.S. 319 : 82 Law Ed 288

[11]19 Howell S.T., 1029

case of *Mahomed Jackariah and Co. v. Ahmed Mahomed*[12], The objection to the search warrants on the ground that they authorized a general search must therefore be overruled. Another objection that no documents could be seized is equally untenable, for, by an amendment of Section 172 before the present case commenced, documents came to be included in the section. The learned Judge, while holding that the search and the seizure of the goods were both authorized by Section 172, has further held that the seizure of the goods was also authorized by Section 178. In taking this view also he was right, but in my opinion it is sufficient to refer to Section 172 and it is not necessary to invoke Section 178.

21. For the reasons given above the appeal is allowed and the order of the learned Judge quashing the orders contained in the notices dated, respectively, the 19th May, the 20th May and the 23rd May, 1955 and the order for a writ of mandamus, directing the Appellants to forbear from giving effect to them is set aside, subject to the reservation as to the right of the Respondents to claim the constitutional immunity if and when they think they are going to be subjected to self-incrimination, as I have explained above. The Cross-objection is dismissed and the result is that the application of the Respondents for various writs made on the 23rd May, 1955, is also dismissed. There will be no order for costs.

K. C. Das Gupta, J.

22. I agree.

Appeal allowed.

[12] ILR 15 Cal 109