PETITIONER:
ROMESH CHANDRA MEHTA

Vs.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT:
18/10/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 940
CITATOR INFO :

R	1970 SC1065	(14)
R	1970 SC1310	(8)
F	1971 SC1087	(12,18)
R	1972 SC 62	(5)
R	1972 SC1224	(10)
R	1973 SC1196	(15,16,20)
F	1976 SC1167	(7)
R	1978 SC1025	(35)
RF	1981 SC 379	(16,50,68)
C	1991 SC 45	(15,16)
D	1992 SC1795	(4,6,7,8,12)

ACT:
Sea Customs Act (8 of 1878), and Customs Act (52 of 1962)--Customs Officer--If police officer within the meaning of s. 25 of the Evidence Act (1 of 1872).

HEADNOTE:
The accused were charged with some offenses under s. 120-B Indian penal Code read with s. 167(81) of the Sea Customs Act, 1878, s. 5 of the Import and Export Control Act, 1947, for specific offences under the Sea Customs Act, and for offences under as 108 and 135 of the Customs Act, 1962. Statements made by the accused to an officer of customs in an enquiry under s. 171-A of the Sea Customs Act and statements made were tendered in evidence.
On the questions: (1) Whether the statement made by the person accused of offences under the Sea Customs Act should also be deemed to have been recorded under the Customs Act, 1962.
(2) Whether an officer of customs under the Sea Customs Act, 1878 is a police officer within the meaning of s. 25 of the Evidence Act and hence the confessional statements made to him were inadmissible in evidence.
(3) Whether the statements were inadmissible under Art. 20(3) of the Constitution; and
(4) Whether an officer of customs, acting under the Customs Act, 1962 is, in any event, a police officer within the meaning of s. 25 of the Evidence Act and hence confessional

statements made to him were inadmissible in evidence.
HELD: (1) Even after the repeal to the Sea Customs Act, 1878, admissibility of a statement in a trial on a complaint made before a Magistrate for contravention of the provisions of that Act, must be judged in the light of the taint, if any, attaching thereto when the statement was made; the determination of the question depends only on s. 25 of the Evidence Act and Art. 20(3) of the Constitution. [466 B]
(2) A customs officer under the 1878 Act, had the power to detain, to arrest, obtain a search warrant to produce the person arrested before a Magistrate and to obtain an order for remand and to keep him in custody with a view to collect evidence. He may therefore have opportunities, which a police officer has of extracting a confession from a suspect, but a customs officer is not on that account. a police officer. The test for determining whether an officer of customs is to be deemed a police officer is whether he is invested with all the powers of a police officer qua investigation of an offence. including the power to submit a report under s. 173, Cr. P.C. An officer of customs may exercise the various powers conferred on him for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. The enquiry made by him is a judicial proceeding for the purpose of as. 193
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and 228 I.P.C., and his orders are subject to appeal and revision. He does not exercise, when enquiring into a suspected infringement of the Sea Customs Act, powers of investigation which a police officer may, in investigating the commission of an offence. He has no power to investigate an offence triable by a Magistrate nor the power to submit a report under s. 173 Cr. P.C. [467 C--D; 469 A--B]
State of Punjab v. Barkat Ram. [1962] 3 S.C.R. 338, Raja Ram Jaiswal v. State of Bihar, [1964] 2 S.C.R. 752, Badku Joti Savant v. State of Mysore, [1966] 3 S.C.R. 698 and P. Shankar Lall v. ,Asstt. Collector of Customs, C.A. Nos. 52 & 104/65 dated 12-12-1967, referred to.
(3) The statements are not inadmissible because of the protection grated by Art. 20(3) of the Constitution.
In order that the guarantee against testimonial compulsion incorporated in Art. 20(3) may be claimed by a person it must be established that when he made the statements sought to be tendered in evidence against him, he was a person accused of an offence. Section 171 of the Sea Customs Act, refers to 'any person' and includes a person who is suspected or believed W be concerned in the smuggling of goods. But a person, arrested by a customs officer because he is found in possession of smuggled goods or on suspicion that he is concerned in smuggling, is not, when called upon by the customs officer to make a statement or to produce a document or tiring, a person accused of an offence within the meaning of Art. 20(3) of the Constitution. The steps taken by the customs officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of goods dutiable or prohibited and imposing penalties. These steps are taken to prevent smuggling and to recover duties of customs. The customs officer does not, 'at that stage, accuse the person suspected of infringing the provisions of the Sea Customs Act or with the commission of an offence, nor is the formally accusing the person of any offence punishable at a trial before a Magistrate. In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an

accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate. This Court in State of Bombay v. Kathi Kalu Oghad [1962] 3 S.C.R. 10 in using the expression 'the person accused must have stood in the character of an accused person" did not set out a different test for determining the stage when a person may be said to be accused of an offence. [469 G 470 C; 471 G]
Raj Narayan Lal Bansilal v. Maneck, Phiroz Mistry [1961] 1 S.C.R. 417, followed.
Maqbool Hussain v. State of Bombay. [1953] S.C.R. 730, M-P. Sharma & Ors. v. Satish Chandra, District Magistrate, Delhi, [1954] S.C.R. 1077 and Bhagwandas Goenka v. Union of India, Cr. A. No. 131 & 132 of 1961 dated 20-9-1963, referred to.
Collector of Customs, Madras v. Kotumal Bhirumal Pihlajani, A.IR. 1967 Mad. 263 and Laxman Padma Bhagat v. State, 67 B.L.R. 317, approved.
Calcutta Motor & Cycle Co. v. Collector of Customs,. A.I.R. 1956 Cal. 253 and Collector of Customs v. Calcutta Motor and Cycle Co. A.I.R. 1958 Cal. 682, disapproved.
(4) In certain matters the 1962 Act differs from the 1878 Act. For instance, under the 2878 Act search of any place could not be made by a customs officer on his own accord: he had to apply for and obtain a
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search warrant, but under s. 105 of the 1962 Act, it is open to the Assistant Collector of Customs himseft to issue a search waRrant. A proper officer is also entitled under the 1962 Act to stop and search conveyances: he is entitled to release a person on bail or otherwise. and for this purpose has the same powers and is subject to the same provisions as the officer in charge of a police station is. But these additional powers do not make him a police officer within the meaning of .s. 25 of the Evidence Act. Though he has all the powers of an officer in charge of a police station the expression 'otherwise' does not confer on him the power to lodge a report before a Magistrate under s. 173 Cr. P.C. and it is implicit in the provisions of s. 137 of the 1962 Act that the proceedings before a Magistrate can only be commenced by way of a complaint and not on a report made by a customs officer. The powers conferred on a cUstoms officer and the proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appealable and revisable. Therefore, a customs officer under the 1'962 Act is not a police officer within the meaning of s. 25 of the Evidence Act. [478 D--G; 479 A]
Under s. 104(1), if the Customs Officer has reason to believe that a person has been guilty of an offence punishable under s. 135 he could arrest such person. But the section only prescribes the conditions in which the power of arrest may be exercised. By informing such a person of the' grounds of his arrest, the customs officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an enquiry with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender being charged be.fore a Magistrate. If he forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under s. 137 and until a complaint is so filed the person against whom an enquiry is commenced under the Customs Act does not Stand in the. character of a person accused of an offence under s. 135. [479 D---F]
Under the Customs Act of 1962, the Customs Officer is

authorised to confiscate goods improperly imported into India and to impose penalties. But on that account the basic scheme of the 1878 Act is not altered. The customs officer, even under the 1962 Act, continues to remain a revenue officer primarily concerned with the detection of smuggling and enforcement and levy of proper duties and prevention of entry into India of dutiable goods without payment of duty and of goods of which entry is prohibited. He does not on that account become a police officer, for, even Under the 1962 Act, a formal accusation is deemed to be made only when a complaint is made before a competent Magistrate to try the person guilty of the infraction under any of the ss. 132 to 135 of the Act. [479 G 480 B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION,: Criminal Appeal No. 27 of 1967.

Appeal by special leave from the judgment and order, dated September 8, 1966 of the Calcutta High Court in Criminal Revision No. 231 of 1965 and Criminal Appeal No. 45 of 1968.

Appeal by special leave from the judgment and order, dated November 14, 1967 of the Bombay High Court in Criminal Revision Application No. 682 of 1967 and CriMinal Appeal No. 46 of 1968.

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Appeal by special leave from the judgment and order, dated November 9, 1967 of the Bombay High Court in Criminal Revision Application No. 447 of 1967 and Criminal Appeal No. 47 of 1968.

Appeal by special leave from the judgment and order, dated November 9, 1967 of the Bombay High Court in Criminal Revision Application No. 475 of 1967.

B.C. Misra, P.K. Ghosh for P.K. Chakravarty, for the appellant (in Cr. A. No. 27 of 1967).

C.K. Daphtary, Attorney-General, B. Sen and G.S. Chatterjee for the respondent (in Cr. A. No. 27 of 1967).

K. Rajendra Chaudhuri, for the appellant (in Cr. A. No. 45 of 1968).

B. Sen and S., P. Nayar, for the respondents (in Cr. A. No. 45 of 1968).

A. K. Sen, Parus .4. Mehta, Janendra Lal, J.R. Gagrat and B.R..,Agarwala, for the appellant (in Cr. A. No. 46 of 1968).

B. Sen, A. P. Gandhi, R.N. Sachthey, S.P. Nayar and B.D. Sharma, for the respondents (in Cr. A. No. 46 of 1968).

A.S.R. Chari, B.M. Patel and M.V. Goswami, for the appellant (in Cr. A. No. 47 of 1968).

B. Sen, .4. P. Gandhi, R.N. Sachthey and S.P. Nayar, for the respondents (in Cr. A. No. 47 of 1968).

The Judgment of the Court was delivered by

Shah, J. The Assistant Collector of Customs filed a complaint against Romesh Chandra Mehta and four others in the Court of the Additional District Magistrate, 24 Parganas, charging them with offences under s. 120BI.P. Code read with s. 167(81) of the Sea Customs Act, 1878, s. 5 of the Import & Export Control Act, 1947, and for specific offences committed in pursuance of the conspiracy. It was the case of the complainant that when Mehta was searched on December 13, 1962, at the Dum Dum Airport, Calcutta, diamonds and jewellery worth Rs. 1,91,000 were found on his person and currency notes of Rs. 27,000 were found in a

suit-case with him and that pursuant to a statement made by Mehta diamonds, pearls and jewellery of the value of Rs. 2,61,800 and correspondence telegrams and cables bearing upon the conspiracy to smuggle gold, precious stones etc. into India from foreign countries were recovered from different places.

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The complainant tendered in evidence at the trial certain confessional statements which he claimed were made before the Customs Authorities in an enquiry under s. 171-A of the Sea Customs Act, 1878, by Mehta and the other persons accused. Counsel for the accused objected to the admissibility of that evidence but the objection was overruled by the Trial Magistrate. The High Court of Calcutta rejected a petition invoking their revisional jurisdiction against the order of the Trial Magistrate. With special leave, Mehta has appealed to this Court.

Counsel for Mehta urged three contentions in.support of the appeal:

(1) that the statements tendered in evidence by the Customs Officer must be deemed by virtue of s. 160 of the Customs Act 52 of 1962 to be recorded under the provisions of that Act and their admissibility may be adjudged in the light of that Act alone;

(2) that an Officer of Customs is a "police officer" within the meaning of s. 25 of the Indian Evidence Act, 1872, and a confessional statement made before him is inadmissible in evidence at the trial of the appellant and his co-accused;

(3) that the statements made before the Customs Officer were otherwise inadmissible, because Mehta and others being persons accused of an offence were compelled by the provision of s. 171-A of the Sea Customs Act, 1878,, to be witnesses against themselves within the meaning of Art. 20(3) of the Constitution.

By s. 160(1) of Act 52 of 1962 read with the Schedule to that Act, the Sea Customs Act 8 of 1878 was repealed. By sub-s. (3) of s. 160 it is provided:

"Notwithstanding the repeal of any enactment by this section,--

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made or any licence, permission or exemption granted or any assessment made, confiscation adjudged or any duty levied or any penalty or fine imposed or any forfeiture, cancellation or discharge of any bond ordered or any other thing done or any "other action taken under any repealed enactment shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act;

(b) . . . . . "

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But the admissibility of statements recorded by a Customs Officer under s. 171-A of the Sea Customs Act, 1878, depends upon the determination of the question whether the statements when made were inadmissible under s. 25 of the Evidence Act, and Art. 20(3) of the Constitution. Even after the repeal of the Sea Customs Act, admissibility of the statement made in a complaint made before a Magistrate for contravention of the provision of that Act must be adjudged in the light of the taint, if any, attaching thereto when the statement was made. The first contention

must, therefore, fail.

Section 25 of the Indian Evidence Act, 1872, enacts that "No confession made to a police officer shall be proved as against a person accused of any offence". The broad ground for declaring confessions made to a police-officer inadmissible is to avoid the danger of admitting false confessional statements obtained by coercion, torture Or iII-treatment. But a Customs Officer is not a member of the police force. He is not entrusted with the duty to maintain law and order. He is entrusted with powers which specifically relate to the collection of customs duties and prevention of smuggling. There is no warrant for the contention raised by counsel for Mehta that a Customs Officer is invested in the enquiry under the Sea Customs Act with all the powers which a police-officer in charge of a police station has under the Code of Criminal Procedure. Under the Sea Customs Act, a Customs Officer is authorised to collect customs duty to prevent smuggling and for that purpose he is invested with the power to search any person on reasonable suspicion (s. 169); to screen or X-ray the body of a person for detecting secreted goods (s. 170A); to arrest a person against whom a reasonable suspicion exists that he =has been guilty of an offence under the Act (s. 173); to obtain a search warrant from a Magistrate to search any place within the local limits of the jurisdiction of such Magistrate (s. 172); to collect information by summoning persons to give evidence and produce documents (s. 171-A); and to adjudge confiscation under s. 182. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve a summons to produce a document or other thing or to give evidence, and the person so summoned is bound to attend either in person or by an authorized agent, as such officer may direct, and the person so summoned is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power arrest, the power to detain, the power to search or obtain a 467
search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Sea Customs Act. For purpose of ss. 193 and 228 of the Indian Penal Code the enquiry made by a Customs Officer is a judicial. proceeding. An order made ’by him is appealable to the Chief Customs-authority under s. 188 and against that order revisional jurisdiction may be exercised by the Chief Customs authority and also by the Central Government at the instance of any person aggrieved by any decision or order passed under the Act. The Customs Officer does not exercise, when enquiring into a suspected infringement of the Sea Customs Act, powers of investigation which a police-officer may in investigating the commission of an offence. He is invested with the power to enquire into infringements of the Act primarily for the purpose Of adjudicating forfeiture and penalty. He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report under s. 173 of the Code of Criminal Procedure. He can only make a complaint in writing before a competent Magistrate.

In The State of Punjab v. Barkat Ram(1) this Court held (Subba Rao, J., dissenting) that a Customs Officer under the Land Customs Act 19 of 1.924 or under the Sea Customs Act 8 of 1878 is not a police-officer for the purpose of s. 25 of the Indian Evidence Act, 1872, and that

conviction of the offender on the basis of his statements to the Customs Officer for offences under s. 167(8) of Sea Customs Act, 1878, and s. 23(1) of the Foreign Exchange Regulation Act, 1947, is not illegal. Raghubar Dayal, J., who delivered the majority judgment of this Court observed:

".....that the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order..

> The powers of customs officers are really not for such purpose. Their powers are for the purpose of checking the smuggling of goods and the due realisation of customs duties and to determine the action to be taken in the interests of the revenues of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines."

In Raja Ram jaiswal v, State of Bihar(2) the decision in Barkat Rara's case(x) was distinguished and it was observed

(1) [1962] 3 S.C.R. 338. (2) [1964] 2 S.C.R. 752.

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(Raghubar Dayal, J., dissenting) that the expression "police officer" in s. 25 of the Evidence Act was not to be construed narrowly but in a wide and popular sense. The Court in that case held that an Excise Inspector or Sub-Inspector under the Bihar and Orissa Excise Act 2 of 1915 upon whom .all the powers of a police officer were conferred is entitled to investigate any offence under the Excise Act and to submit a charge-sheet and on that account he must be regarded as a police officer within the meaning of s. 25 of the Evidence Act. The Court observed that the object of enacting s. 25 of the Evidence Act was to eliminate from consideration confessions made to an officer who by virtue of his position, could extract by force, toture or inducement a confession, and an Excise Officer acting' under s. 78(3) of the Bihar & Orissa Excise Act, 1915, was in the same position as an officer in charge of a police station making an investigation under Ch. XIV of the Code of Criminal ProcedUre, and had the same opportunities of extracting a confession from a suspect.

In Badku Joti Savant v. State of Mysore(1) this Court held that the officer empowered under the Central Excise and Salt Act 1 of 1944 and when making enquiries for purposes of that Act invested with powers of an officer-in-charge of a police station investigating a cognizable offence, is not a police officer within the meaning of s. 25 of the Indian Evidence Act, and the statement of an accused person recorded by him is not hit by that section. The Court in that case distinguished the decision in Raja Ram Jaiswal's Case.(2) and observed that a Central Excise Officer was invested with powers of an officer-in-charge of a police station when investigating a cognizable offence, but he had no power to submit a report under s. 173 of the Code of Criminal Procedure, and on that account he was not a police officer within the meaning of s. 25 of the Evidence Act.

In .P. Shanker Lall and Ors. v. The Assistant Collector of Customs, Madras,(5) Sikri, J., delivering the judgment of the Court observed that a confession made before the Assistant Collector of Customs was not inadmissible under s. 25 of the Indian Evidence Act

Counsel for Mehta contended that a Customs Officer who has power to detain, to arrest, to produce the person arrested . before a Magistrate, and to obtain an order for remand and keep him in his custody with a view to examine

the person so arrested and other persons with a view to collect evidence, has opportunities which a police officer has of extracting confessions

(1) [1966] 3 S.C.R. 698. (2) [1964] 2 S.C.R. 752.
(3) Cr.As.Nos.52 & 104 of 1965 decided on December 12, 1967.

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from a suspect, and if the expression police officer be not narrowly understood, a statement recorded by him of a person who' is accused of an offence is inadmissible by virtue of s. 25 of the Indian Evidence Act. But the test for determining whether an officer of customs is to be deemed a police officer is whether he is invested with all the powers of a police officer qua investigation of an offence, including the power to submit a report under s. 173 of the Code of Criminal Procedure. It is not claimed that a Customs Officer exercising power to make an enquiry may submit a report under s. 173 of the Code of Criminal Procedure.

The remaining contention that a person against whom an enquiry is made by the Customs Officer under the Sea Customs Act is a person accused of an offence and on that account he cannot be compelled to be made a witness against himself, and the evidence if any collected by examining him under s. 171-A of the Sea Customs Act is inadmissible has, also no substance. By Art. 20(3) of the Constitution a person who is accused of any offence may not be compelled to be a witness against himself. The guarantee is, it is true, not restricted to statements made in the witness box. This Court in The State of Bombay v. Kathi Kalu Oghad(1) observed at p. 37:

> "To be a witness' means imparting knowledge in respect or relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.
>
> 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing."

But in order that the guarantee against testimonial compulsion incorporated in Art. 20(3) may be claimed by a person it has to be established that when he made the statement sought to be tendered in evidence against him, he was a person accused of an offence. Under s. 171-A of the Sea Customs Act, a Customs Officer has power in an enquiry in connection with the smuggling of goods to summon any person whose attendance he considers necessary, to give evidence or to produce a document or any other thing, and by el. (3) the person so summoned is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents and other things as may be required. The expression "any person" includes

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a person who is suspected or believed to be concerned in the smuggling of goods. But a person arrested by a Customs Officer because he is found in possession of smuggled goods or on suspicion that he is concerned in smuggling is not when called upon by the Customs Officer to make a statement or to produce a document or thing, a person accused of an offence within the meaning of Art. 20(3) of the Constitution. The steps taken by the Customs Officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of goods dutiable or

prohibited and imposing penalties. The Customs Officer does not at that stage accuse the person suspected of infringing the provisions of the Sea Customs Act with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of customs when' collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act, he is not accusing the person of any offence punishable at a trial before a Magistrate. In Maqbool Hussain v. The State of Bombay(x), the Court held that a person against whom an order for confiscation of goods had been made in proceedings taken by Customs Officers under s. 167 of the Sea Customs Act and was subsequently prosecuted before a Magistrate for offences under the Foreign Exchange Regulation Act, 1947, could' not plead the protection of Art. 20(2), since he was not "prosecuted" before the Customs authorities, and the order for confiscation was not a "punishment" inflicted by a Court or judicial tribunal within the meaning of Art. 20(2) of the Constitution and the prosecution was not barred.

In M.P. Sharma & Ors. v. Satish Chandra, District Magistrate, Delhi and Ors.(2) this Court observed that a compelled production of incriminating documents by a person against whom a First Information Report under the Code of Criminal Procedure has been made is testimonial compulsion within the meaning of Art. 20(3) of the Constitution. But a search and seizure of a document under the provisions of ss. 94 and 96 of the Code of Criminal Procedure do not amount to compelled production thereof within the meaning of Art. 20(3). It was observed by Jagannadhadas, J., at p. 1087:

> "Broadly stated in the guarantee in Article 20(3) is against "testimonial compulsion" ..... the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from

(1) [1953] S.C.R. 730. (2) [1954] S.C.R. 1077.

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> him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in prosecution." .

The Court further observed that the guarantee under Art. 20(3). is available to the petitioners against whom a First Information Report had been recorded.

In Raja Narayanlal Bansilal v. Maneck Phiroz Mistry and Anr.(1) admissibility of a statement made before an Inspector appointed by the Government of India under the Indian Companies Act, 1913, to investigate the affairs of a Company and to report thereon was canvassed. It was observed at p. 436:

> ". . . one of the essential conditions for invoking the constitutional guarantee enshrined in Art. 20(3) is that a formal accusation relating to the commission of an offence, which would normally lead to his prosecution, must have been leveled against the party who is being compelled to give evidence against him."

Sinha, C.J., speaking for the majority of the Court in Kathi Kalu Oghad's Case(2) stated that:

> "To bring the statement in question within the prohibition of Art. 20(3), the person

> accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

In the two earlier cases M.P. Sharma's case(3) and Raja Narayanlal Bansilal's Case(1) this Court in describing a person accused used the expression "against whom a formal accusation had been made", and in Kathi Kalu Oghad's case(2) this Court used the expression "the person accused must have stood in the character of an accused person". Counsel for Mehta urged that the earlier authorities were superseded in Kathi Kalu Oghad's case(2) and it was ruled that a statement made by a person standing in the character of a person accused of an offence is inadmissible by virtue of Art. 20(3) of the Constitution. But the Court in Kathi Kalu Oghad's case(2) has not set out a different test for determining the stage when a person may be said to be accused of an offence. In Kathi Kalu Oghad's case(2) the Court merely set out the principles in the light of the effect of a formal accusation on a person, viz., that he stands in the character of

(1) [1961] 1 S.C.R. 417. (2) [1962] 3 S.C.R. 10.
(3) [1954] S.C.R. 1077.
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an accused person at the time when he makes the .statement. Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial the offence. Where a Customs Officer arrests a person and informs that person of the grounds of his arrest, (which he is bound to do under Art. 22(1) of the Constitution,) for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. In the case of an offence by infringement of. the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate.

The decision of this Court in Bhagwandas Goenka v. The Union of India(1) lays down no principle inconsistent with the view we have expressed. In Bhagwandas Goenka's case(1) the appellant was charged with using a sum of 4,000 dollars borrowed by him when he was on a visit to the United States of America and with depositing cheques of the value of 500 dollars with a foreign bank in which he had an account, and thereby infringing ss. 4(1) and (3) read with s. 23 of the Foreign Exchange Regulation Act 7 of 1947. At the trial before a Magistrate the appellant contended that the information demanded and obtained from him on September 19, 1952 and May 14, 1953 by the Reserve Bank of India under s. 19 of the Foreign Exchange Regulation Act with respect to the two sum. s was inadmissible. This Court negatived the contention observing that no information was collected from the accused after July 4, 1955, when he was asked to show cause by the Reserve Bank why he should not be prosecuted for contravention of the various provisions of the Act with respect to the two sums. The Court observed:

> "The information collected under s. 19 is for the purpose of seeing whether a prosecution should be launched or not. At that stage when information is being collected

there is no accusation against the person from whom information is being collected. It may be that after the information has been collected to Central Government or the Reserve Bank may come to the conclusion that there is no case for prosecution and the person concerned may never be accused,. It cannot therefore be predicated that the person from whom in-

(1) cr. As. Nos. 131 & 132 of 1961 dated September 20, 1963.

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formation is being collected under s. 19 is necessarily in the position of an accused. The question whether he should be made an accused is generally decided after the information is collected and it is when a show cause notice is issued, as was done in this case on July 4, 1955, that it can be said that a formal accusation has been made against the person concerned. We are therefore of the opinion that the appellant is not entitled to the protection of Art. 20(3) with respect to the information that might have been collected from him under s. 19 before July 4, 1955."

Under s. 19 of the Foreign Exchange Regulation Act, 1947, it is open to the Central Government or the Reserve Bank of India, if it considers necessary or expedient, to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, by order in writing, to require any such person to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or any person specified in the. order with such information, book or other document. The information which was asked for and obtained in Bhagwandas Goenkas case(1) under s. 19 of the Foreign Exchange Regulation Act was not held to be information obtained in violation of Art. 20(3) of the Constitution, for the accusation in view of the Court was made against the appellant for the first time on July 4, 1955, when the Reserve Bank of India called for an explanation of the appellant why he should not be prosecuted for contravention of the various provisions of the Foreign Exchange Regulation Act. Under the proviso to s. 23(3) of that Act it is enacted that "where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission." In the light of the proviso the Court assumed that when an authority which is statutorily authorised and bound to call for an explanation before a complaint is filed, serves a formal notice calling for explanation, a formal accusation may be deemed to be made. But that is not the position in the present case.

In our judgment the view expressed by Sinha, J., in Calcutta Motor and Cycle Company v. Collector of Customs(2) that a proceeding under s. 171-A of the Sea Customs Act, 1878, being preliminary to a criminal trial any statement procured would be

(1) Cr. As. Nos. 13/& 132 of 1961 dated September 20, 1963.

(2) A.I.R. [1956] Cal. 253. 3 Sup. C.I.[69--13]

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inadmissible under Art. 20(3) there being a formal accusation relating to the commission of an offence' which

in the normal course may result in prosecution, is not correct. Opinion of the Court recorded in appeal from that judgment in Collector of Customs & Ors. v. Calcutta Motor and Cycle Company(1) in which Chakravartti, C.J., observed that the protection of Art. 20(3) avails even where a person is not formally accused or charged is inconsistent with the judgments of this Court already referred, cannot also be accepted as correct.

The views expressed by the Madras High Court in Collector of Customs, Madras v. Kotumal Bhirumal Pihlajani(2) at p. 275 that:

> " .....the bar under Art. 20(3) of the Constitution will not be available to the 'statements in this case, since it is not in dispute that they have been recorded only during an investigation undertaken by the Customs Officer under sections 107 and 108 of the Customs Act of 1952 and at a time when the deponents did not stand in the position of accused in the light of the principles stated in the decisions cited above,",

and by the Bombay High Court in Laxman Padma Bhagat v. The State(3) that a person examined under s. 171-A of the Sea Customs Act, 1878, does not stand in the character of an accused person inasmuch as there is no formal accusation made against him by any person at that time are, in our judgment, substantially correct.

We, therefore, agree with the High Court that the statements made by Mehta and other persons accused before the Additional District Magistrate, 24 Parganas, were not inadmissible in evidence because of the protection granted under Art. 20(3) of the Constitution.

Criminal Appeal No. 45 of 1968

On March 6, 1963, six parcels containing watches were seized by the Customs authorities at Santa Cruz Airport, Bombay. The Customs authorities recorded statements of the appellant Chitnis and attached certain documents from him. Thereafter the Customs authorities filed a complaint against Chitnis and thirteen others for offences under s. 120B I.P. Code read with s. 167(81) of the Sea Customs Act, and s. 135 of the Customs Act, 1962 read with s. 109 I.P. Code .alleging that between August 15, 1952 and January 28, 1963,. and between February 5, 1963 and March 6, 1963, the offenders had imported wat-

(1) A.I.R. 1958 Cal. 682. (2) A.I.R. 1967 Mad. 263.
(3) 67 B.L.R. 317.

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ches and had on that account committed offences under s. 120B LP. Code read with s. 167(81) of the Sea Customs Act, and s. 120 I.P. Code read with s. 135 of the Customs Act, 1962, read with s. 109 I.P. Code respectively. At the trial the prosecutor tendered in evidence certain statements made before the Customs authorities by the accused. The Advocate for the accused objected to the admissibility of those statements. The Trial Magistrate rejected the contention and in a revision application filed before the High Court of Bombay the order passed by the Presidency Magistrate was confirmed.

Criminal Appeal No. 46 of 1968

Dady Adarji Fatakia was arrested on December 26, 1964. At that time he was found in possession of 540 watches. He was served with a summons under s. 108 of the Customs Act, 1962, and he made a statement before a Customs Officer. Thereafter a complaint Was filed before the Presidency Magistrate, Bombay, against Fatakia for offences under s.

135(a) and (b) of the Customs Act, 1962. At the trial the public prosecutor supplied to, the accused copies of the statements made by Fatakia. The accused Fatakia then applied to the Magistrate. that the statement if tendered in evidence would be inadmissible because they were inadmissible under s. 25 of tile .Evidence Act or s. 162 of the Code of Criminal Procedure or under Art. 20(3) of the Constitution. The contentions were negatived by the Magistrate and in a revision application to the High Court the order of the Presidency Magistrate was confirmed.

Criminal Appeal No. 47 of 1968

On May 30, 1965, the Customs Officers seized 11,000 tolas of gold from a room in the occupation of the appellant Poonamchand and then recorded his statement after serving him with a summons under s. 108 of the Customs Act, 1962. A complaint was filed against the appellant and two others in the Court of Additional Chief Presidency Magistrate, 8th Court, Bombay, under s. 120B I.P. Code and s. 135 of the Customs Act, and Rule 126P(2) (II) and (IV) of the Defence of India Rules read with s. 109 I.P. Code and s. 135 of the Customs Act, 1962 read with s. 109 I.P. Code. At the trial evidence was given by the Superintendent, Central Excise, Marine and Preventive Division, that the persons accused had made certain oral statement in his presence admitting their complicity in smuggling gold. An application by Poonamchand raising the contention that the statements were inadmissible under s. 25 of the Indian Evidence Act and Art. 20(3) of the Constitution was rejected on the ground that the application was premature. A revision application was
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then filed in the High Court and it was heard with the other petitions and was rejected.

In the three appeals Nos. 45, 46 and 47 of 1968 the statements were made to or recorded before the Customs Officers in an enquiry made under the Customs Act, 1962. It was urged on behalf of the appellants that the statements made before the .Customs Officers exercising power under the Customs Act, 1962 are inadmissible at the trial of a person, accused of an offence under the Customs Act, 1962, became of s. 25 of the Evidence Act and Art. 20(3) of the Constitution.

The scheme of the Customs Act, 1962, relating to searches, seizure and arrest and confiscation of goods and conveyances and imposition of penalties may be briefly examined. Under ss. 100 and 101 a Customs Officer has power to search any person to whom these sections apply if the officer has reason to believe that such person has secreted about his person, any goods liable to confiscation or any documents relating thereto. Section 104 confers upon the 'Customs Officer power to arrest if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under s. 135. Every person so arrested must be informed of the grounds for such arrest. Section 105 authorises any Assistant Collector of Customs to search any premises if he has reason to believe that goods. liable to confiscation, or any documents or things which in 'his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place, he may authorise any officer customs to search or may himself search for such goods, documents or things. Under s. 104(3) where an officer of customs has arrested any person under sub.-s. (1) he shall, for the purpose of realising such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under

the Code of Criminal Procedure, 1898. By s. 107 any officer of customs empowered in that behalf by general or special order of the Collector of the Customs may, during the course of any enquiry in connection with the smuggling of any goods--(a) require any person to produce or deliver any document or thing. relevant to the enquiry; and (b) examine any person acquainted with the facts and circumstances of the case. Section 108 confers upon a gazetted officer of customs the power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in an enquiry which such officer is making in connection with the smuggling of goods. The person so summoned is bound to attend and to state the truth upon any subject respecting which he is examined, or make statements and

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produce such documents and other things as may be required, and every such inquiry shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code. Section 110 authorises the proper officer to seize such goods as he has reason to believe are liable to confiscation under the Act. Sections 111 to 127 deal with confiscation of goods and conveyances and with imposition of penalties. An appeal lies to the appropriate authority at the instance of a person aggrieved 'by any decision or order passed under the Act within the time specified under s. 128. Under s. 130 the Central Board of Revenue may exercise revisional powers in respect of orders passed by the Subordinate Customs authorities and s. 131 authorises the Central Government on the application of any person aggrieved by certain orders specified therein to exercise the power to annul or modify such orders. Sections 132 to 139 deal with offences and prosecution. Section 135 provides, insofar as it. is material:

> "Without prejudice to any action that may be taken under this Act, if any person--
>
> (a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or
>
> (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section
>
> 111, he shall be punishable,(i)
>
> (i) . . . . . .
>
> (ii) . . . . . .

Section 137, insofar as it is material, provides:

> "(1) No court shall take cognizance of any offence under section 132, section 133, section 134 or section 135, except with the previous sanction of the Collector of Customs.
>
> (2) No court shall take cognizance of any offence under section 136,--
>
> (a) where the offence is alleged to have been committed by an officer of customs not lower in rank than

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> Assistant Collector of Customs, except with

the previous sanction of the Central Government;

(b) . . . . . ."

The Customs Act 52 of 1962 invests the Customs Officer with the power to search a person and to arrest him, to search premises, to stop and search conveyances, and to examine persons, and also with the power to summon persons to give evidence and to produce documents and seizure of goods, documents and things which are liable to confiscation. He is also invested with the power to release a person on bail. He is entitled to order confiscation of smuggled goods and impose penalty on persons proved to be guility of infringing the provisions of the Act. It is implicit in the provisions of s. 137 that the proceedings before a Magistrate can only be commenced by way of a complaint and not on a report made by a Customs Officer.

In certain matters the Customs Act of 1962 differs from the Sea Customs Act of 1878. For instance, under the Sea Customs Act search of any place could not be made by a Customs Officer of his own accord: he had to apply for and obtain a search warrant from a Magistrate. Under s. 105 of the Customs Act, 1962, it is open to the Assistant Collector of Customs himself to issue a search warrant. A proper officer is also entitled under that Act to stop and search conveyances: he is entitled to release a person on bail, and for that purpose has the same powers and is subject to the same provisions as the officer-in-charge of a police station is. But these additional powers with which the Customs Officer is invested under the Act of 1962 do not, in our judgment, make him a police officer within the meaning of s. 25 of the Evidence Act. He is, it is true, invested with the powers of an officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise. The expression "or otherwise" does not confer upon him the power to lodge a report before a Magistrate under s. 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate, do not make him an officer-in-charge of a police station,

Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appealable and are subject also to the revisional jurisdiction of the Central Board of Revenue and may be carried to the Central Government. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue.

For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti

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Savant's case (1), we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of s. 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by s. 25 of the Indian Evidence Act.

It was strenuously urged that under s. 104 of the Customs Act, 1962, the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under s. 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guility of the offence punishable under s. 135 and information to be given to him

amount, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who has been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable under s. 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an inquiry under ss. 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs Officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under s. 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under s. 135.

Section 167 of the Sea Customs Act, 1878, contained a large number of clauses which described different kinds of infractions and different penalties or punishments liable to be imposed in respect of those infractions. Under the Customs Act of 1962 'the Customs Officer is authorised to confiscate goods improperly imported into India and to impose penalties in cases contemplated by ss. 112 and 113. But on that account the basic scheme of the Sea Customs Act, 1878, is not altered. The Customs Officer even under the Act of 1962 continues to remain a revenue officer primarily concerned with the detection of smuggling and enforcement and levy of proper duties and prevention of entry into

(1) [1966] 3 S.C.R. 698.

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India of dutiable goods without payment of duty and of goods of which the entry is prohibited. He does not on that account become either a police officer, nor does the information conveyed by him, when the person guilty of an infraction of the law is arrested, amount to making of an accusation of an offence against the person so guilty of infraction. Even under the Act of 1962 formal accusation can only be deemed to be made when a complaint is made before a Magistrate competent to try the person' guilty of the infraction under ss. 132, 133, 134 and 135 of the. Act. Any statement made under ss. 107 and 108 of the Customs Act by a person against whom an enquiry is made by 'a Customs. Officer is not a statement made by a person accused of an offence.

Before parting with the case, we must observe that this Court has been invited in this group of appeals to consider the question of admissibility of evidence before the trial was completed. At various stages of argument counsel asked us to make several assumptions on matters of evidence which were not before this Court. In some cases the statements made by the accused before the Customs Officer were tendered in evidence and were objected to; in other cases even before the statements were tendered in evidence, objections were raised. We may also observe that we are not concerned in these appeals to decide whether the statements relied upon

were obtained from persons charged with infraction of the provisions of the Customs Act by officers having authority over them, by inducement, threat or promise having reference to the inquiry made against them. These questions, if raised, have to be decided at the trial of the appellants. The appeals fail and are dismissed.

R.K.P.S. Appeals dismissed.

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JUDIS