

## CRIMINAL REVISION

Before G. D. Khosla and Gurnam Singh, JJ.

BARKAT RAM,—*Petitioner.*

*versus*

THE STATE,—*Respondent.*

Criminal Revision No. 559 of 1958.

1958

Oct., 9th

*Evidence Act (I of 1872)—Section 25—Police Officer—Meaning of—Customs Officers—Whether included in the term “police Officer”—Confession made to a Customs Officer—Whether admissible.*

*Held*, that in construing section 25 of the Evidence Act the term police officer should not be read in any strict technical sense but according to the more comprehensive and popular sense. The powers conferred upon the Customs Officers and the duties imposed upon them are analogous to the powers of police officers. The Customs Officers are thus police officers within the meaning of section 25 of the Evidence Act and a confession made to a Customs Officer is inadmissible in evidence.

*Case referred to a larger Bench by Hon'ble Mr. Justice G. L. Chopra in 21st August, 1958 for decision of legal point involved in the case and finally decided by a Division Bench consisting of Hon'ble Mr. Justice G. D. Khosla and Hon'ble Mr. Justice Gurnam Singh on 9th October, 1958.*

*Petition under section 439 of the Criminal Procedure Code for revision of the order of the Court of Shri Parshotam Sarup IInd Additional Sessions Judge, Amritsar, dated the 19th March, 1958, affirming that of Shri Sawan Mal Chopra, Magistrate 1st Class, Amritsar, dated the 29th January, 1958 convicting the accused petitioner.*

S. N. BALI for Petitioner.

S. M. SIKRI for Respondent,

## JUDGMENT

Gurnam Singh, J.—The marginally-noted three revision petitions were referred to the Division Bench by Chopra, J., on account of judicial conflict between Calcutta and Madras High Courts on the points involved in the petition.

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On the 8th of June, 1957, H.B. Das, Superintendent Customs received information about smuggling of Pakistan gold from Lahore to Amritsar by engine crew of the railway train coming from Lahore to Amritsar. He deputed Waris Ram, Customs Inspector, Attari, to travel in a railway engine from Attari to Amritsar. The other customs officers were waiting for the arrival of the railway-train at Amritsar Railway Station. As soon as the train arrived at the platform the engine was surrounded by the customs staff. The three petitioners, namely, Barkat Ram, Ram Murti and Jagan Nath were first asked to fill in the declaration forms which they did. The petitioners did not declare any gold in their possession. They were then simultaneously interrogated by different customs officials. Their interrogation led to recovery of 100 tolas of gold from underneath the coal in the railway engine. The gold was taken into possession. The memo relating to this is Exhibit P. A. The customs officials still suspected more gold with the petitioners. They, therefore, took the petitioners to their office. Again the petitioners were questioned. All the three petitioners informed the customs officials that they had more gold lying in the railway engine. Consequently Ram Murti and Jagan Nath were again taken to the railway station but Barkat Ram refused to go. After midnight 65 bars of gold were found buried in the coal. Along with the gold a letter Exhibit P.E. was recovered which indicated that the gold

Barkat Ram was to be received by one Ghulam Mohammad.  
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The customs officials then set out for search of Ghulam Mohammad mentioned in this letter. At 3 a.m. Waris Ram Inspector went to Grand Hotel Amritsar but he did not find this person there. He, however, found out that one Ghulam Mohammad was occupying a room in that hotel. Two days later Ghulam Mohammad petitioner was arrested in Amritsar. Some letters were also recovered from a search of the room occupied by him. During the enquiry the customs officials recorded confessional statements of the petitioners on different occasions. These statements have been taken into consideration by the Courts below for recording their convictions. The plea of the accused is that these statements were not voluntary and true but were the result of police pressure. Ultimately the Assistant Collector Land Customs Amritsar filed a complaint against the petitioners on the 13th of September, 1957. They were tried by the Additional District Magistrate Amritsar, and convicted and sentenced to imprisonments under section 23 of the Foreign Exchange Regulation Act, 1947 (Act No. 7 of 1947) and also under section 167(81) of the Sea Customs Act, 1878 (Act No. 8 of 1878). The petitioners' appeal was dismissed by the Additional Sessions Judge Amritsar on the 19th of March, 1958. The petitioners then filed revision petitions in this Court which, as already mentioned, were referred to Division Bench.

The petitioners, when questioned by the trial Court, pleaded innocence. They have also produced some witnesses in defence in support of their allegations.

It is contended before us that any confession made to the customs officer is barred by section 25 of the Evidence Act. The learned counsel argues that the duty of the customs officers is to prevent and detect crimes. It is, therefore, urged that a customs officer is a 'police officer' and as such comes within the mischief of section 25 of the Evidence Act. The confessional statements of the accused were, therefore, wrongly admitted by the trial Court. Thus the main question agitated before us is that such confessional statements made to customs officers are not admissible in evidence as they are barred by section 25 of the Evidence Act. This contention of the defence is supported by a number of authorities. At first the matter came up for consideration in the Calcutta High Court in *the Queen v. Hurribole Chunder Ghose* (1). In that case the prisoner made a confessional statement which was reduced into writing by one of the inspectors in whose custody the prisoner was, and subsequently the same statement was acknowledged and signed by the prisoner in the presence of the Deputy Commissioner of Police who received and attested the statement in his capacity as a Magistrate and Justice of the Peace. At the trial the statement was tendered in evidence and was admitted by the Judge who overruled the objection on behalf of the prisoner that the statement was barred by section 25 of the Evidence Act. The matter then came before the Calcutta High Court. In the course of his judgment Garth, C.J., observed:—

“that the terms ‘Police Officer’ should be read not in any strict technical sense, but according to its more comprehensive and popular meaning”.

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(1) I.L.R. 1 Cal. 207.

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and it was held that such a confession was, under section 25 of the Evidence Act, not admissible in evidence. In the course of his judgment at page 215 the learned Chief Justice observed—

“There is no doubt that, looking at the various sections of Bengal Act IV of 1866, the Deputy Commissioner of Police is not a member of the Police Force within the meaning of that Act, and, moreover, on looking back to the Police Act of 1861, it will be found that the term ‘Police Officer’, as used in that Act, has generally the same meaning as a member of the Police Force in the Act of 1866; but, in construing the 25th section of the Evidence Act of 1872, I consider that the term ‘police officer’ should be read not in any strict technical sense, “but according to its more comprehensive and popular meaning”. In common parlance and amongst the Generality of people, the Commissioner and Deputy Commissioner of Police are understood to be officers of police or in other words, “police officers”, ‘quite as much as the more ordinary members of the force; and, although in the case of a gentleman in Mr. Lambert’s position, there would not be, of course, the same danger of a confession being extorted from a prisoner by any undue means, there is no doubt that Mr. Lambert’s official character, and the very place where he sits as Deputy Commissioner, is not without its terrors in the eyes of an accused person; and I think it better in construing a section such as the 25th, which was

intended as a wholesome protection to the accused, to construe it in its widest and most popular signification."

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The same matter again came up for consideration before a Full Bench of the Calcutta High Court—*Amin Shariff v. Emperor* (1). Mukerjee, J., who wrote the leading judgment in his learned and detailed judgment, came to the same conclusion and held that section 25 expressly barred confession made to an excise officer in the conduct of investigation of an offence under the Excise Act. The question referred to the Full Bench in that case was as follows:—

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

At page 581, Mukerji, J., said—

"That question is, whether an Excise Officer is a Police Officer within the meaning of section 25, Evidence Act."

He then proceeded and observed:—

"The most satisfactory mode of construction, of course, is to examine the statute and if possible to ascertain the meaning from the statute alone. If the meaning of an expression used in a statute is plain, the intention of the legislature

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(1) A.I.R. 1934. Cal. 580.

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cannot be speculated upon and a Judge is not allowed to modify statutes to suit his own views of Justice or expediency. In the present case it is not possible to ascertain the meaning of the term 'Police Officer' from the Evidence Act, itself, because that Act has not given a definition of the term nor has it given an indication as to what its meaning or import is or in what sense it is to be understood. In such circumstances, therefore, one has to resort to such extrinsic aids to construction as permissible. That in such cases it is allowable to travel beyond the four corners of the statute for the purpose of ascertaining the meaning of the word or the sense in which the legislature when they passed the statute intended the word to be understood, is a proposition which cannot be disputed. Nor can it be doubted that for this limited purpose an investigation into the history of the enactment may be embarked upon. The word has to be understood in the import it bore at the time the statute came into being; and for this purpose other statutes, in *pari materia*, if any, may be taken into account. There is also a canon of construction, though it is not really necessary to resort to it in the present case, namely that while, \* 0 \*\*

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The learned Judge then cites a quotation from Beale on Cardinal Rules of Legal Interpretation, Edition 2, p. 333.

"If there are circumstances which show that words in a statute must have been used

by the legislature in a larger sense than their ordinary meaning the Court is bound to read them in that sense."

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After tracing the history of the provisions of the Evidence Act as well as the Police Act the learned Judge at page 583 column 2 observed—

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

The learned Judge then cites from Oxford Dictionary two of the senses in which the word 'police' is used—

"The department of Government which is concerned with the maintenance of public order and safety, and the enforcement of the law, the extent of its functions varying greatly in different countries and at different periods."

"The civil force to which is entrusted the duty of maintaining public order enforcing regulations for the prevention and punishment of the breaches of the law and detecting crime; construed as plural, the members of a "police force; the constabulary of locality."



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“All these duties which Police Officer discharge are but different phases of and means for carrying out the two comprehensive duties, namely, of prevention of crimes and detection of crime. \* \*  
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“It is mainly this duty of detection of offenders and the consequential duty of bringing an offender to justice which requires an investigation to be made, that differentiates a private individual from a policeman.”

The learned Judge then traces the history of the law preceding the enactment of the Evidence Act 1872 and observes—

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

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

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The Full Bench approved the observations of Grath, C.J., in *The Queen v: Hurribole Chunder Ghose* (1), again the matter came for consideration before the Calcutta High Court in *S. Fernandez v. The State* (2). This was a case where a confession was made to a customs officer and is, therefore, directly applicable to the facts of the present case. It was held by the Division Bench—

"The term police officer in section 25, Evidence Act, should be read not in any strict technical sense, but according to the more comprehensive and popular meaning. The investigation or the power of investigation is not the real or governing test for the application of section 25, Evidence Act. It is enough that the officers under the powers conferred on them by an Act (such as for example

(1) I.L.R. 1 Cal. 207.

(2) A.I.R. 1953 Cal. 219.

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the Sea Customs Act or the Bengal Excise Act) have got the essential powers, analogous to police powers, of prevention or detection of crimes even though they have not been vested with the powers of investigation. Hence a Preventive Officer of the Customs Department is a police officer in this extended sense within the meaning of section 25, Evidence Act, and as such no confession made to him shall be proved against a person accused of any offense."

This view has been continuously followed by the Calcutta High Court. The same view was expressed by the Full Bench of the Bombay High Court in *Nanoo Sheikh Ahmed v. Emperor* (1), in which it was held—

"An Abkari officer, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence, is a police officer within the meaning of section 25 and, therefore, a confession made to him is inadmissible."

A similar view was taken by a Division Bench of the Lahore High Court in *Ibrahim v. Emperor* (2), where it was held:—

"A member of the Civic Guard should not be treated as anything else than a police

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(1) A.I.R. 1927 Bom. 4.  
 (2) A.I.R. 1944 Lah. 57.

officer when called out on duty, even though he may not have the powers of investigation. But a confession not made to him while he was on duty, or in connection with his duties, cannot be regarded as a confession made to a police officer."

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The learned Deputy Advocate-General relies on a Special Bench decision of the Patna High Court where a contrary view of the matter was taken by that Court—*Radha Kishun Marwari v. Emperor* (1) where it was held—

"The distinction between a person who is nothing but a Police Officer and one who is primarily not a Police Officer but merely invested with the powers of a Police Officer is material and cannot be ignored for the purpose of construing section 25." \* \* \*

"Section 25 was intended to apply to Police Officers and Police Officers alone and if the framers of the Act did not have in view at the time of framing the section any class of persons other than the Police Officers, Court cannot read the term 'Police Officers' as including men who are provisionally and for a limited purpose only invested with some of the powers of Police Officers."

This Court, therefore, held that a confession made before an Excise Inspector was admissible in evidence. The view of the Patna High Court was considered by the Full Bench of the Calcutta High Court already referred to. Mukerji, J., dealing

(1) A.I.R. 1932 Pat. 293

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with this view at page 582 column 2 observed as follows:—

“The question is not how it is understood at present, but how it was understood in or about 1872. In the same case Fazl Ali, J., has drawn a distinction between a person who is nothing but a Police Officer and one who is primarily not a Police Officer but merely invested with the powers of a Police Officer. Such a distinction no doubt has come into existence by the creation of distinct Departments by the Government of the country. But the question is whether when the Evidence Act was enacted such a distinction really existed and was intended. Agarwal, J., in the said case appears to have held that no person is a police officer unless he be enrolled in or appointed a “member of the Police Force or is declared by statute to be a member of that force, a dictum which is directly opposed to that of Garth, C.J., quoted above. It may be pointed out that the aforesaid dictum of Garth, C.J., has been followed by this Court ever since.”

The learned Judge then refers to a Full Bench decision of the Allahabad High Court in the celebrated case of *Queen Empress v. Babu Lal* (1), where a history of the provisions contained in section 25 of the Evidence Act was traced.

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(1) I.L.R. 6 All. 509.

The learned counsel for the petitioner cited an authority of this Court reported as *Om Parkash v. The State* (1), where Falshaw, J., held—

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“In section 25 of the Evidence Act, the expression ‘Police Officer’ is not used in the technical and restricted sense in which it is used in section 1 of the Police Act, but is used in a popular and more comprehensive signification.

A Ward Rationing Officer, like an Excise Officer, is a Police Officer within the meaning of section 25 of the Evidence Act, and a confession made by an accused person before him is not admissible in evidence.”

It may be mentioned here that a third view is taken by the Madras High Court. That view is that an officer invested with the powers of an officer in charge of a police station for investigation of offences comes within the purview of section 25 of the Evidence Act and section 162 of the Code of Criminal Procedure and any confession made to him in the course of investigation is inadmissible under section 25 of the Evidence Act and the statements made to such an officer under section 162 of the Code of Criminal Procedure can be used only in the manner enacted therein. According to this view any officer whether he is a customs officer or an excise officer if he is invested with the powers of an officer in charge of a police station he is to be treated as a police officer for the purposes of section 25 of the Evidence Act. This view, therefore, is not so much contrary to the view expressed by

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the Calcutta High Court. The Madras view is expressed in *Public Prosecutor v. C. Parmasivam and others* (1). In *re Mayilvahanam and others* (2), and *E : C : Richard v. Forest Range Officer, Mettupalayam* (3).

I will now examine the powers and duties of customs officers under the Sea Custom Act, 1878 (Act 8 of 1878) in order to see whether a customs officer can be considered to be a 'police officer' within the meaning of section 25 of the Evidence Act. Chapter XVII of the Sea Customs Act deals with the procedure relating to offences, appeals etc. Sections 169 and 171 confer certain powers of search upon the customs officers. Section 173 authorises the customs officers to arrest persons on reasonable suspicion. Section 178 gives powers of seizure of things liable to confiscation. Section 171-A is added by the Sea Customs (Amendment) Act, 1955, (Act 21 of 1955). This section gives powers to customs officers to summon persons to give evidence and produce documents. The powers conferred upon the customs officers and the duties imposed upon them are clearly analogous to powers of police officer. Addition of section 171-A has the effect of conferring powers of investigation though this power, in my opinion, is not the real or governing test for attracting section 25 of the Evidence Act. To illustrate this point it only needs to be mentioned that a confession before a police constable is not admissible in evidence though he does not enjoy the powers of investigation. After carefully considering the various authorities cited by the counsel for the parties, with respect, I entirely agree with the

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(1) A.I.R. 1953 Madras 917.  
 (2) A.I.R. 1947 Madras 308.  
 (3) A.I.R. 1958 Madras 31.

reasons given by Mukerji J. for coming to the conclusion that in construing section 25 the term police officer should not be read in any strict technical sense but according to the more comprehensive and popular sense. This view also found favour with Falshaw, J. in his judgment already referred to. I would, therefore, hold that the confessions made by the petitioners to the customs officers are not admissible in evidence. If these confessions are excluded from consideration there is no other evidence to sustain the conviction of the petitioners.

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It is argued by the learned State counsel that the confessional statements made by the petitioners were admissible under section 27 of the Evidence Act as these statements led to recovery of the gold. Exhibits P.A. and P.D. are recovery memos by means of which gold was taken into possession. They do not disclose that the petitioners were ever interrogated and that it was the result of that interrogation that the gold was recovered. On the other hand, these documents clearly show that the recovery was the result of search made by the customs officers. These documents were signed by all the three petitioners. They merely acknowledged the recovery of gold from under the coal in the railway engine. These documents were written at the time of recovery of the gold when the matter was fresh in the minds of the customs officer.

The next document to be considered is Exhibit D.B. which is dated 20th/22nd June, 1957. This appears to be a notice given under section 167(81) of the Sea Customs Act of 1878 read with sections 19 and 23-A of the Foreign Exchange Regulations Act, 1947. The petitioners in this notice were told that gold was further liable to



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confiscation and that they were liable to penal action under section 167(81) of Sea Customs Act for not having given a declaration at the time of its import. This document does not say that the gold was recovered after interrogation of the petitioners. It clearly says that the recovery of the gold was the result of search made by the customs officers. On 13th of September, 1957, more than a month after the incident a complaint under section 167(81) of the Sea Customs Act, 1878, as amended in 1955 and section 23(1) of the Foreign Exchange Regulation Act, 1947 was made against the petitioners in the court of the Additional District Magistrate, Amritsar. For the first time in para 8 of this complaint this fact of interrogation of the petitioners leading to recovery of gold was mentioned. This seems to be an afterthought. I, therefore, do not attach much importance to the complaint which was long delayed when it was put in Court. It is not denied that no such statements of the petitioners were recorded by the customs officers. Their testimony, therefore, that the recovery was the result of interrogation of the petitioners cannot be relied upon. The gold was found concealed under the coal. There is no other evidence to prove that the petitioners or any one of them concealed it. It, therefore, cannot be said that they were conscious of its presence in the railway engine. Thus neither of the petitioners can be held in conscious possession of the gold.

There being no other evidence against the petitioners to sustain their convictions, I would accept their petitions and order their acquittal forthwith.

G. D. Khosla, J.—I agree.

B. R. T.