PETITIONER:
BADKU JOTI SAVANT

Vs.

RESPONDENT:
STATE OF MYSORE

DATE OF JUDGMENT:
01/03/1966

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 1746 1966 SCR (3) 698
CITATOR INFO :
R 1970 SC 940 (8,25)
R 1970 SC1065 (4,12,13,14)
R 1974 SC2136 (21,22)
R 1981 SC 379 (16,47,50,53,54,55,57,58)
R 1991 SC 45 (15,16,18,21)

ACT:
Sea Customs Act (8 of 1878), s. 167(81)-Offence under-Offender whether must be directly concerned in the import of smuggled gold.
Central Excise and Salt Act (1 of 1944), s. 21-Deputy Superintendent of Customs and Excise given certain powers of an 'officer-in-charge of a police station'-Such officer whether a police officer within the meaning of Indian Evidence Act (1 of 1872), s. 25.

HEADNOTE:
The appellant who lived in a village near Goa was found in possession of contraband gold. He was prosecuted under s. 167(81) of the Sea Customs Act read with s. 9 of the Land Customs Act (9 of 1924). The trial Magistrate convicted him but the Sessions Judge relying on the decision of the Calcutta High Court in Sitaram Agarwala's case acquitted him. The High Court of Mysore, in appeal against the acquittal, considered the evidence and relying, inter alia, on the statement made by the appellant to the Deputy Superintendent of Customs and Excise held him guilty. With certificate the appellant came to this Court. The questions that felt for consideration were : (i) whether the view taken by the High Court differing from the view taken by the Calcutta High Court in Sitaram Agarwala's case with respect to the interpretation of s. 167(81) was correct, and (ii) whether the statement made by the appellant to the Deputy Superintendent of Customs & Excise was admissible in view of s. 25 of the Indian Evidence Act.
HELD : (i) The High Court was right in not following the view of the Calcutta High Court in Sitaram Agarwala's case, the correct view as to the interpretation of s. 167(81) of the Sea Customs being that the section takes in even those

persons who may not be concerned with the actual import of the prohibited goods. [700 G-H]
Sachidananda Banerjee, Assistant Collector of Customs v. Sitaram Agarwal, [1966] 2 S.C.R. 1, followed.
Sitaram Agarwal v. State, [1962] Cr. L.J. 43, disapproved.
(ii)The Central Excise and Salt Act, 1944 does not confer all the powers of the police officer on Central Excise Officers. The powers confered on them by s. 21(2) of the Act are only for the purpose of inquiry under s. 21(1); they would not entitle the said officers to file a charge-sheetunder s. 173 of the code of Criminal Procedure. Therefore even though a central excise officer may have when making enquiries for purposes of the Act, powers an officer-in-charge of a police station has when investigating a cognizable offence, he does not thereby become 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 . [704 B-C, F-G]
Raja Ram Jaiswal v. State of Bihar, [1964] 2 S.C.R. 752 and Nanoo Sheikh Ahmed v. Emperor, (1927) I.L.R. 51 Bom. 78, distinguished.
State of Punjab v. Barkat Ram,, [1962] 3 S.C.R. 338, relied on.
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Radha Kishun Marwari v. King-Emperor, (1933) I.L.R. 12 Patna 46, referred to.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 26 of 1964.
Appeal from the judgment and order dated November 20, 1963 of the Mysore High Court in Criminal Appeal No. 49 of 1963.
B. R. L. Iyengar and A. G. Ratnaparkhi for the appellant.
A. K. Sen, D. R. Prem, R. H. Dhebar and B. R. G. K. Achar, for the respondent.
Niren De, Additional Solicitor-General and B. R. G. K. Achar, for the intervener.
The Judgment of the Court was delivered by
Wanchoo, J. This is an appeal on a certificate granted by the Mysore High Court. The appellant was prosecuted under s. 167 (81) of the Sea Customs Act (No. 8 of 1878) read with s. 9 of the Land Customs Act (No. 19 of 1924). The appellant lives in a village which is close to Goa. The incident out of which the present appeal has arisen took place on November 27, 1960 when Goa was not a part of India but was Portuguese territory. The Deputy Superintendent of Customs, Goa Frontier Division, Belgaum received information that contraband goods would be found in the house of the appellant. Consequently he raided the house in the company of three panchas. The appellant was not present in the house when the raid took place, but his mother and sisterin-law were there. After necessary formalities the house was searched and a big steel trunk, a cane-box and another steel trunk were taken down from the loft in the kitchen. On opening, a belt, with four pouches stitched to it, was found in the big steel trunk. Inside the pouches, four gold bars with foreign marks and labels of Goa Customs authorities were found. Besides these, a large sum of money and three small cut pieces of gold were also found in the box. In the other two boxes also various sums of money in currency notes were found. The weight of the gold bars was 343 tolas.
On November 30, 1960, the appellant was arrested and interrogated by the Deputy Superintendent of Customs and Excise.

The answers given by him were reduced in writing and his signature was taken on the writing after it had been read over to him. During this interrogation, the appellant admitted that the four gold bars had been given to him on November 27, 1960 in the moming by one Vittal Morajkar of Goa so that he might deliver them back to Morajkar on the motor-stand at Belgaum or near there, and be had kept them in his house. As the gold was foreign gold
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and as under the notification under s. 8(1) of the Foreign Exchange Regulation Act, 1947, import of gold into India had been for,bidden except with the general or special permission of the Reserve Bank of India, the appellant was prosecuted on a complaint filed by the Assistant Collector of Central Excise and Land Customs, Goa Frontier Division, Belgaum.
The Magistrate convicted the appellant and sentenced him to imprisonment and fine and also ordered confiscation of the four gold bars. On appeal to the Sessions Judge, the appellant was acquitted relying on the decision of the Calcutta High Court in Sitaram Agarwala v. State(1). Then followed an appeal by the State to the High Court. The High Court disagreed with the view takeu by the Calcutta High Court in Sitaram Agarwal's case(1) and held that even a person like the appellant who might have no direct concern with the import of gold in any way was liable under s. 167(81) of the Sea Customs Act. The High Court then ,considered the evidence and relying on the statement made by the appellant to the Deputy Superintendent of Customs and Excise and also on the other evidence produced in the case held that the appellant was guilty. In consequence, the acquittal of the appellant was set aside and the order of conviction and sentence passed by the Magistrate was restored. The appellant then applied to -the High Court for a certificate to appeal to this Court, and as two questions of law of general importance arose in this case, the High Court granted the certificate. The two questions were : (1) whether the view taken by the High Court differing from the view taken by the Calcutta High Court in Sitaram Agarwal's case(1) with respect to the interpretation of s. 167(81) was correct, and (ii) whether the statement made by the appellant to the Deputy Superintendent of Customs and Excise was admissible in evidence in view of s. 25 of the Indian Evidence Act (No. 1 of 1872). These are the two questions which have been argued before us on behalf ,of the appellant in the present appeal.
So far as the first question is concerned, namely, the interpretation of s. 167(81) of the Sea Customs Act, the matter is now settled by the decision of this Court in Sachidananda 'Bannerjee, Assistant Collector of Customs v. Sitaram Agarwal and another(2). This Court has held therein that the interpretation put by the Calcutta High Court in the case of Sitaram Agarwala(1) is not correct and that s. 167(81) of the Sea Customs Act can also take in persons who may not be concerned the actual import of prohibited goods. The view taken by the Mysore High Court is in accordance with the view taken by this Court in that appeal and in view of that,, learned counsel for the appellant has admitted
(1) [1962] Cr. L.J. 43.
(2) [1966] 2 S.C.R. 1.
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that the appellant would be guilty within the meaning of s. 167 (81) of the Sea Customs Act.
This leaves only the second question, and it has been urged on behalf of the appellant that a Central Excise Officer

under the Central Excises and Salt Act, No. I of 1944 (hereinafter referred to as the Act) is a police officer within the meaning of those words in s. 25 of the Evidence Act. Therefore even though the Deputy Superintendent of Customs and Central Excises may have acted under the powers conferred on him by the Sea Customs Act, he was still a police officer, and the statement made to him by the appellant on November 30, 1960 which is in the nature of a confession would be inadmissible under s. 25 of the Evidence Act. It may be added that the High Court had in this connection relied on the judgment of this Court in the State of Punjab v. Barkat Ram( ) where it had been held by majority that a Customs. Officer under the Sea Customs Act was not a police officer within the meaning of s. 25 of the Evidence Act. The appellant however relies on a later decision of this Court in Raja Ram Jaiswal v. State of Bihar(2) where by majority it was held that an excise officer under the Bihar and Orissa Excise Act (No. 2 of 1915) was a police officer within the meaning of s. 25 of the Evidence Act.

There has been difference of opinion among the High Courts in India as to the meaning of the words "police officer" used in s. 25 of the Evidence Act. One view has been that those words must be construed in a broad way and all officers whether they are police officers properly so-called or not would be police officers within the meaning of those words if they have all the powers of a police -officer with respect to investigation of offences with which they are concerned. The leading case in support of this view is Nanoo, Sheikh Ahmed v. Emperor(3). The other view which may be called the narrow view is that the words "police officer" in s. 25 of the Evidence Act mean a police officer properly so-called and do not include officers of other departments of government who may be charged with the duty to investigate under special Acts special crimes thereunder like excise offences or customs offences, and so on. The leading case in support of this view is Radha Kishun Marwari v. King-Emperor(4). The other High Courts have followed one view or the other, the majority being in favour of the view taken by the Bombay High Court.

It is submitted on behalf ’of the appellant that the view taken by the Bombay High Court in Nanoo Sheikh Ahmed(3) is the correct view and that the view of the Patna High Court in Radha Kishun Marwari(4) is not correct. On the other hand it has been urged on behalf of the State that the view taken by the Patna High

(1) [1962] 3 S.C.R. 338.
(2) [1964]2 S.C.R. 752.
(3) [1927] I.L.R. 51 Bom. 78.
(4) [1933] I.L.R. 12 patna 46.

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Court in Radha Kishun Marwari(1) is the correct one. Prima facie there is in our opinion much to be said for the narrow view taken by the Patna High Court. But as we have come to the conclusion that even in the broad view, a Central Excise Officer under the Act is not a police officer, it is unnecessary to express a final opinion on the two views on the meaning of the words "police officer" in s. 25 of the Evidence Act. We shall proceed on the assumption that the broad view’ may be accepted and that requires an examination of the various provisions of the Act to which we turn now.

The main purpose of the Act is to levy and collect excise duties and Central Excise Officers have been appointed thereunder for this main purpose. In order that they may

carry out their duties in this behalf, powers have been conferred on them to see that duty is not evaded and persons guilty of evasion of duty are brought to book. Section 9 of the Act provides for punishment which may extend to imprisonment upto 6 months or to find upto Rs. 2,000 or both where a person (a) contravenes any of the provisions of a notification issued under s. 6 or of s. 8 or of a rule made under cl. (iii) of sub-section (2) of s. 37; (b) evades the payment of any duty payable under the Act; (c) fails to supply any information which he is required by rules made under the Act to supply or supplies false information; and (d) attempts to commit or abets the commission of any of the offences mentioned in cls. (a) and (b) above. Under s. 13 of the Act, any Central Excise Officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to. believe to be liable to punishment under the Act. Section 18 lays down that all searches made under the Act or any rules made thereunder and all arrests made under the Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 relating respectively to searches and arrests made under that Code. Section 19 lays down that every person -arrested under the Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station. These sections clearly show that the powers of arrest and search conferred on Central Excise Officers are really in support of their main function of levy and collection of duty on excisable goods.

Strong reliance has however been placed on behalf of the appellant on s. 21 of the Act, the material part of which runs thus:

"21. (1) When any person is forwarded under section 19 to a Central Excise Officer empowered to send persons so

(1) [1933] I.L.R. 12 Patna 46.

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arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2)For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case;

Provided that....."

It is urged that under sub-section (2) of s. 21 a Central Excise Officer under the Act has all the powers of an officer-in-charge of a police station under chapter XIV of the Code of Criminal Procedure and therefore he must be deemed to be a police officer within the meaning of those words in s. 25 of the Evidence Act. It is true that sub-section (2) confers on the Central Excise Officer under the Act the same powers as an officer-in-charge of a police station has when investigating a cognizable case; but this power is conferred for the purpose of sub-s. (1) which gives power to a Central Excise Officer to whom any arrested person is forwarded to inquire into the charge against him. Thus under s. 21 it is the duty of the Central Excise Officer to whom an arrested person is forwarded to inquire into the charge made against- such person. Further under proviso (a) to sub-s. (2)of s. 21 if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him

in custody to such. Magistrate. It does not however appear that a Central Excise Officer under the Act has power to submit a charge-sheet under s. 173 of the Code of Criminal Procedure. Under s. 190 of the Code of Criminal Procedure, a Magistrate can take cognizance of any offence either (a) upon receiving a complaint of facts which constitute such offence, of (b) upon a report in writing of such facts made by any police officer, or (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. A police officer for purposes of cl. (b) above can in our opinion only be a police officer properly so-called as the scheme of the Code of Criminal Procedure shows and it seems therefore that a Central Excise Officer will have to make a complaint under cl. (a) above if he wants the Magistrate to take cognizance of an offence, for "ample, under s. 9 of the Act. Thus though under sub-section (2) of s. 21 of the Central Excise Officer under the Act has the powers of an officer-incharge of a police station when investigating a cognizable case, that is for the purpose of his inquiry under sub-s. (1) of s. 21. Section 21 is in terms different fro s. 78(3) of the Bihar and Orissa Excise Act,1915 which came to be considered in Raja Ram Jaiswal's
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case(1) and which provided in terms that "for the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an excise officer empowered under section 77, sub-section (2) , is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer-in-charge of such station". It cannot therefore be said that the provision in s. 21 is on par with the provision in s. 78(3) of the Bihar and Orissa Excise Act. All that s. 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officerin-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the power to submit a charge-sheet under s. 173 of the Code of Criminal Procedure, for unlike the Bihar and Orissa Excise Act, the Central Excise Officer is not deemed to be an officer-in-charge of a police station.

It has been urged before us that if we consider s. 21 in the setting of s. 14 of the Act, it would become clear that the enquiry contemplated under s. 21(1) is in substance different from investigation pure and simple into an offence under the Code of Criminal Procedure. It is not necessary to decide whether the enquiry under s. 14 must also include enquiry mentioned in s. 21 of the Act. Apart from this argument we are of the opinion that mere conferment of powers of investigation into criminal offences under s. 9 of the Act does not make the Central Excise Officer, a police officer even in the broader view mentioned above. Otherwise any person entrusted with investigation under s. 202 of the Code of Criminal Procedure would become a police officer.

In any case unlike the provisions of s. 78(3) of the Bihar and Orissa Excise Act, 1915, s. 21 (2) of the Act does not say that the Central Excise Officer shall be deemed to be an officer-in-charge of a police station and the area under his charge shall be deemed to be a police station. All that s. 21 does is to give him certain powers to aid him in his enquiry. In these circumstances we are of opinion that even though the Central Excise Officer may have when making enquiries for purposes of the Act powers which an officer-in-charge of a police station has when investigating a cognizable offence, he does not thereby become a police officer even if we give the broader meaning to those words

in s. 25 of the Evidence Act. The scheme of the Act therefore being different from the Bihar and Orissa Excise Act, 1915, the appellant cannot take advantage of the decision of this Court in Raja Ram Jaiswals' case(1) taking even the broader view of the words "police officer" in s. 25 of the Evidence Act. We are of opinion that the present case is more in accord with the case of Barkat Ram(2). In this view,

(1) [1964] 2 S.C.R. 752,

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

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of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by s. 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of s. 24 of the Evidence Act. -As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore s. 24 of the Evidence Act has no application in the present case. It is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a police officer within the meaning of those words in s. 25 of the Evidence Act the appellant's statement is admissible. It is not ruled out by anything in s. 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. We hereby dismiss the appeal.

Appeal dismissed.

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