

israil Khan Vs. the State

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Court : Guwahati

Decided On : Jan-05-1951

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : israil Khan

Respondent : The State

Prior history : Ram Labhaya, J. 1. The petnr. Israil Khan @ Babua was ordered to be externed from the Province of Assam for a period of five years by the order of the Mag., 1st Class, Dibrugarh, dated 18-8-1949. On appeal, the learned Ses. J., UAD, modified the order of externment by reducing the period of externment from 5 to 3 years. 2. The petnr. has assailed the correctness of the orders of the Cts. below on several grounds by a petu. Under Sections 435, 439 and 561 A of the Cr. P. C 3. Briefly stated th

Judgement :

Ram Labhaya, J.

1. The petnr. Israil Khan @ Babua was ordered to be externed from the Province of Assam for a period of five years by the order of the Mag., 1st Class, Dibrugarh, dated 18-8-1949. On appeal, the learned Ses. J., UAD, modified the order of externment by reducing the period of externment from 5 to 3 years.

2. The petnr. has assailed the correctness of the orders of the Cts. below on several grounds by a petu. Under Sections 435, 439 and 561 A of the Cr. P. C
3. Briefly stated the facts are that the proceedings were initiated on a report dated 21-1-1949 from the Inspector of Excise, Dibrugarh, to the Dist. Mag. The report was to the effect that Israil Khan was by habit a smuggler of opium. He was importing opium from outside the Province & selling it to local retailers. His house had been searched on a number of occasions on suspicion but nothing incriminating was found as the result of these searches. It was further stated that he had secret places for storage of opium & had been selling it to his trusted dealers. He had a car for transport of opium to different places. Action, therefore, was prayed for against him Under Section 16 & in the alternative Under Section 11, Assam Opium Prohibition Act XXIII (23) of 1947.
4. A protracted inquiry folld. No less than 106 witnesses were examined in support of the prosecution case. Israil Khan produced 61 witnesses in his defence. As a result, an externment order Under Section 17 of the Act was passed as stated above.
5. A preliminary objection has been raised by the learned Govt. Advocate to the competency of the petn. He has pointed out that the order of the learned Ses. J. was final Under Section 17 (3) of the Act & that the H. C. has no power to interfere with the order in the exercise of its revisional or inherent jurisdiction. Reliance has been placed on the language of Section 17 (3), which lays down that
- Any person against whom an order has been made under Sub-section (1) may appeal to the Ct. of Sessions whose decision shall be final.
6. To get at the full significance of the word 'final' as used in 3. 1.7 (3) of the Act, it appears necessary to examine the scheme of the Act. Chap. IV of the Act defines offences & lays down penalties. By Section 27, the Provincial Govt. has been authorised to invest any Dist. Mag., Sub-divisional Mag. or Mag. of the 1st Class with power to try as a Mag. all, or any specified, offences arising in his jurisdiction under Section 5, Section 7, Section 9, S 10 (offences under Chap. IV) or Section 18 & every Ct. of a Mag. so empowered can pass any sentence authorised by the

aforesaid sections respectively notwithstanding anything contained in the Cr. P.C. 1898. There is no express provision in the Act itself providing for appeals against orders of conviction passed for offence under Chap. IV of Section 18; nor is there any provision allowing the H C. to exercise its revisional jurisdiction. But it is not disputed that orders of conviction passed for offences under Chap. IV are appealable. There is no controversy on this point. The Cts. acting under Chap. IV would, therefore, be inferior to & also subject to the appellate & revisional jurisdiction of this Ct. Chap IV of the Act prescribes procedure for demanding security from persons who commit offences under Sections 5 or 6 or protect or harbour smugglers, receivers or sellers of opium, or opium eaters. Section 11, Clause (6) (ii) of this Chapter lays down that the inquiry against habitual offenders Under Section 11 shall be made as nearly as may be practicable according to the procedure prescribed for the trial of warrant cases in the Cr. P.C. 1898, except that no charge need be framed. Clause (7) of Section 11 provides as follows:

For the purpose of this section, the fact that a person is a habitual offender within the meaning of Sub-section (1) may be proved by evidence of general repute or otherwise.

7. No express provision is made in the Act for appeals or revns. against orders passed Under Section 11 & these orders, though not appealable apparently Would be subject to the revisional Jurisdiction of this Ct. as the Cts., which can pass these orders, are criminal Cts. inferior to this Ct.

8. Chap. VI provides for externment of habitual smugglers. Section 16 provides that a Dist. Mag. or a Sub-divisional Mag. or a Mag. of the 1st Class specially empowered by the Provincial Govt. in this behalf may, on receiving information that any person within the limits of his jurisdiction is by habit a smuggler, in the manner hereinafter provided require such person to show cause why he should not be externed from the Province or from any part thereof for such period as the Mag. may deem fit. Section 17 lays down that the provisions in Chap. V of this Act shall, in so far as they are applicable, apply to all proceedings Under Section 16. Clause (3) of Section 17 provides for an appeal to the Ct. of Sessions & lays down further that the order passed on appeal shall be final. It is noteworthy that it is only

in case of externment orders under Chap. V of the Act that right of appeal is expressly recognised by the Act & the appellate order has been made final. All other appellate orders passed under the Act remain subject to the revisional jurisdiction of the Ct. Exception has been made in cases of externment orders to which the attribute of finality is attached by the statute. This course must have been adopted with some purpose. The express provision contained in Section 17 making the orders of the Ct. of Sessions final cannot be dismissed as something without any significance, In fact, its meaning & implication appear to be sufficiently obvious. The object was to exclude the revisional jurisdiction of the H. C. so far as externment proceedings are concerned & this interpretation finds support from the language of Section 430, Cr. P.C. In view of this express provision, the H. C. will have no power to interfere in the exercise of its inherent powers Under Section 561 A also as any such interference would deprive the order of its finality under the Cr. P.C. with which it is clothed by the statute.

9. It may be noted that it is not contended by the learned Counsel for the petnr. that the Provincial Legislature exceeded its powers in making the appellate order final in the sense that it deprived the aggrieved person from invoking the revisional or the inherent jurisdiction of the H. C. under the Cr. P.C. In these circumstances, it seems to me that it is not open to the petnr. to invoke the revisional jurisdiction of this Ct. or its inherent jurisdiction for interference with an order covered by Section 17 (3) of the Act.

10. In 'Dular Dat v. Nijabat Hussain' 12 Cal 536, the question whether sentences in criminal cases passed by officers Under Section 4 of the Act XXXVII (37) of 1855, which according to Section 4 (1), were final, could be revised by. the H. C. in the exercise of its powers of revn. under Chap. XXXII, Cr. P.C. 1882, came up for decision & it was held that the revisional jurisdiction of the H. C. was excluded by Section 4 (1) of the Act XXXVII '37) of 1855 by reason of the fact that orders passed by officers under that section were expressly made final. The interpretation placed on the word 'final' In this case with which I am in respectful agreement finds support from the provisions contained in Section 1 of the Cr. P.C. which lays down that

in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

This section saves provisions conferring special jurisdiction or power contained in other laws for the time being in force & such provisions would be enforceable unless there is a specific provision in the Statute to the contrary.

11. It may be stated broadly that a revn. would lie against any order of an inferior Ct. unless the revisional jurisdiction of the Ct. is taken away either expressly or by necessary implication. Instances of cases where certain orders have been removed from the revisional jurisdiction of the H C. are found in Section 22 of the Press Act, 1910, Section 15, Extradition Act, 1903, Section 16, Reformatory Schools Act, 1897 & Section 51, Emergency Powers Ordinance, 1932.

12. In 'Hiralal v. Emperor' AIR (2) 1915 Lah 227, the right of revn. in respect of an order of attachment Under Section 386 of the Code, as it stood before 1923, was held to be impliedly barred by that section.

13. In 'Yasin Moral, v. Isaf Khan' 59 Cal 1080, it was remarked (obiter) that the provisions contained in Sections 71 & 03 of the Village Self-Govt. Act (Bengal Act V (5) of 1919), seemed to restrict the powers of the H. C, Under Section 439, Cr. P, C.

14. In 'Hari Sadhan v. Probhakar Ray' AIR (23) 1939 Cal 259, it was held that there was no right of revn. against the order of the Union Bench under Bengal Village Self-Govt. Act (Act 5 of 1919) by virtue of Section 93 of the Act.

15. In 'Balkrishna Hari v. Emperor' AIR (20) 1933 Bom 1, it was held that Section 51 of the Emergency Powers Ordinance, 1932, deprived the H. C. of its revisional jurisdiction under the Cr. P.C. & the Letters Patent though the Cts. under the Ordinance were held subject to the appellate jurisdiction of the Ct. for purposes of Section 107, Govt. of India Act (1915). In 'Kumar Singh v. Emperor' AIR (33) 1946 PC 169, Clause 26, Special Cr. Cts. Ordinance II (2) of 1942 was held to have

taken away all powers of revn. from the H. C.

16. In this case, the Assam Opium Prohibition Act makes the appellate order final. The effect of the provision is to exclude the revisional jurisdiction of the Ct. at least by necessary* implication, if not in express terms, for otherwise Section 17 (3), loses all significance & meaning. The order of the learned Ses. J., therefore, is not revisable under the Cr. P.C. The attribute of finality which the law attaches to the order will also prevent the Ct. from exercising its inherent jurisdiction Under Section 561 A, Cr. P.C.

17. The learned Counsel for the petnr. has not made any serious effort to show that the order in question is subject to the revisional jurisdiction of this Ct. under the Cr. P.C. or that it can be interfered with Under Section 561A of the Cr. P.C. He has, however, invoked the power of superintendence of this Ct. with which it has been invested by Article 227, Const. Ind.

18. The learned Govt. Advocate urges that the order of superintendence conferred on the H. Cs. by Article 227, Const. Ind. is limited to administrative matters only & the H. C. has, therefore, no power to interfere with or to question any judgment of any inferior Ct. which is not otherwise subject to appeal or revn. He also contends that the provisions contained in Section 17 (3), Assam Opium Prohibition Act, also exclude the supervisory jurisdiction of the Ct. under Article 227, of the Constitution. It appears to me that both these contentions are unsound.

19. The power of superintendence was conferred on Chartered H. Cs. by Section 15, Charter Act of 1861. The corresponding section of the Govt. of India Act, 1915, was Section 107. Under Section 107, the H. Cs on which the power of superintendence was conferred, could interfere with the judgments & orders of the inferior Cts. subject to their appellate jurisdiction. The H. Cs. of Calcutta, Madras & Patna held that they could interfere with the Judicial orders passed by Cts. subject to their appellate jurisdiction in the exercise of their powers of superintendence Under Section 107 of the Govt. of India Act, vide, 'Indu Bala Dasi v. Lakshmi Narayan' AIR (22) 1935 Cal 102, 'Venku Naidu v. Lakshmi Animal' AIR (23) 1936 Mad 187; 'Mehdat-unnissa v. Sewak Ram' AIR (20) 1933 Pat 161). The extraordinary powers of superintendence were utilised where the H. Cs. cunsd.

that interference was necessary to prevent an irreparable injury or failure of justice, & the Chartered H. Cs. could independently of Sections 435 & 439, Cr. P.C. revise orders of inferior Cts. under their appellate jurisdiction in the exercise of their powers of superintendence Under Section 107, Govt. of India Act. In this connection 'Puniya Syamalo v. King Emperor' (AIR (10) 1923 Mad 275), may be refd. to. In another case reported in 'AIR (19) 1932 Cal 867' it was remarked (obiter) that the powers of superintendence given to the H. Cs. Under Section 107, Govt. of India Act, might justify interference in a proper case. Authority on this point is not at all meagre & it is unnecessary to labour this point. The recent cases which deal with this point are 'Pigot v. All Mahomed' 48 Cal 522 AIR (20) 1933 Bora 1 & 'Emperor v. Jamnadas' AIR (24) 1937 Bom 153.

20. Under Section 107, Govt. of India Act, 1915, the power of superintendence could be exercised only in regard to orders of the Cts. which were subject to the appellate jurisdiction of the Ct. regardless of the fact whether a particular order was subject to appeal or revn. or not. In 1935, the powers of superintendence over matter judicial were curtailed but not wholly taken away. Under Section 224(1), Govt. of India Act, 1935, every H. C. was given the power of superintendence over all Cts. subject to its appellate jurisdiction, but with this qualification that it would not have jurisdiction to question any judgment of any inferior Ct. which was not otherwise subject to appeal or revn. Thus judgments & orders which were final & not subject to appeal or revn. were placed outside the ambit of the supervisory jurisdiction conferred on H. Cs. by Section 224, Govt. of India Act, 1935 (vide 'Kavasji Pestonji v. Rustomji Sorabji' AIR (36) 1949 Bom 42).

21. By Article 227 of the Constitution, every H. C. can exercise superintendence over all Cts. & tribunals throughout the territories in relation to which it exercises jurisdiction. Only Cts. & tribunals constituted under any law relating to the Armed Forces are not subject to the superintendence of the H. Cs. It is not now necessary for the H. C. to be able to exercise its powers of superintendence that the Ct. over which superintendence is to be exercised should be subject to its appellate jurisdiction. The words 'All Cts. in India for the time being subject to its appellate jurisdiction' occurring in Section 224, Govt. of India Act, 1935, do not form part of Article 227. They have been omitted. Under Section 107, Govt. of

India Act, 1915, also powers of superintendence could be exercised over the Cts. which were subject to the appellate jurisdiction of the H. C. It is not now a necessary condition for the exercise of the powers of superintendence that the Ct. or tribunal whose judgment or order is in question should be subject to the appellate jurisdiction of the Ct. It would follow that even if the judgment or order of a Ct. or tribunal functioning within the territorial limits of the jurisdiction of the H. C. is made final by statute & even if the Ct. itself is not subject to the appellate jurisdiction of the H. C., its judgments or orders may be interfered with in the exercise of the powers of superintendence of the H. C. The effect of Article 227 of the Constitution is that not only it restores to the H. Cs. the jurisdiction that was taken away by Section 224(2), Govt. of India Act, 1935, but it enlarges the powers of superintendence which the H. Cs. exercised before 1935 by dispensing with the requirement as a preliminary to the exercise of the powers of superintendence that the Ct. over which this power is sought to be exercised should be subject to the appellate jurisdiction of the Ct., & this power is obviously not limited to matters administrative only, as urged by the learned Govt. Advocate. The language of the Article & the previous history of the law both leave no room for doubt in the matter.

22. The other contention that Section 17, Clause (3), Assam Opium Prohibition Act has the effect of limiting the powers conferred on the H. Cs. by Article 227, does not merit any serious consideration. The Assam Opium Prohibition Act was passed in December 1947. At that time the Govt. of India Act, 1935, was in force. The powers of superintendence which the H. Cs. then had Under Section 224, of the Act of 1935 did not enable them to question all judgments of inferior Cts. The jurisdiction was expressly limited to matters which were subject to appeal or revision otherwise than Under Section 224, Govt. of India Act, 1935. The Assam Act, therefore, when it made the appellate order of the Sessions Ct. final Under Section 17 (3) no doubt excluded not only the revisional or the inherent jurisdiction of the H. C. under the Cr. P.C. but the supervisory jurisdiction Under Section 224 as well. The Const. Ind. came into force on 26-1-1950. H. Cs. were invested with a jurisdiction by Section 227(1) which they did not possess before. They have now power of superintendence over all Cts. in the territories in relation to which they exercise jurisdiction except Cts. constituted under any law relating to the Armed Forces. Cts. acting under the Assam Opium Prohibition Act are clearly subject to

this jurisdiction. An Act of the Provincial Legislature cannot have the effect of curtailing¹ the powers conferred on the H. Cs. by the Const. Ind., & it cannot, therefore, be urged now that the H. C. in Assam is precluded from exercising its jurisdiction under Article 227(1) by reason of the provisions contained in Section 17 (3), Assam Act. No provision contained in any local or special law if it conflicts with an express provision contained in the Constitution can have any force or validity. Section 17 (3) cannot, therefore, control the powers of this Ct. Under Section 227 (1). It no doubt has got no revisional jurisdiction under the Cr. P.C. but its powers of superintendence Under Section 227 remain inspite of Clause (3) of Section 17.

23. The third contention raised by the learned Govt. Advocate was that the Cts. under the Assam Opium Prohibition Act are special Cts. over which the H. C. has got no jurisdiction. In support of this proposition he cited 'Banwari Gope v Emperor' 22 Pat 175 'AIR (33) 1946 PC 169'. In the P.C. case, their Lordships of the P.C. held that a special Mag is not a Ct. inferior to the H. C. & indeed not a Ct. at all & therefore the H. C. had no powers of revn. Under Sections 435 & 439 of the Cr. P.C. Similarly, a Special Bench of the Patna H. C. held that the H. C. could not revise the order of conviction or sentence passed by a special Mag. appointed under the Ordinance as powers of revn. could only be exercised as against orders passed by Mags, exercising jurisdiction under the Code. These authorities are not helpful now in view of the language used in Article 227, Const. Ind. These two cases were decided before the Const. Ind. came into force. Article 227(1) confers powers of superintendence on every H. C. which can be exercised not only over Cts. constituted under the Cr. P.C., but over all Cts. & tribunals throughout the territories in relation to which it exercises jurisdiction. Every H. C. therefore, has got powers of superintendence over all Cts. & tribunals functioning within the limits or its territorial jurisdiction, except Cts. or tribunals constituted by or under any law relating to the Armed Forces. Under Section 107, Govt. of India Act, the powers of superintendence could be exercised only over Cts. subject to the appellate jurisdiction of the H. C. Under Article 227 this is not the case. All Cts. & tribunals, even if they are not subject to the appellate jurisdiction of that H. C. are subject to the supervisory jurisdiction conferred on it by Article 227. Whether therefore, the Cts. under the Assam Act are Cts. constituted by Cr. P.C. or by the Act itself, the

H. C. can exercise its powers of superintendence on them. The contention raised by the learned Govt. Advocate takes no notice of the clear language of the Article 227, Const. Ind.

24. It may be noted that the Cts. under the Assam Act cannot be regarded as special Cts. in any sense. They are Cts. under the Cr. P.C. They have to be invested with powers to try offences under the Assam Opium Prohibition Act Under Section 27. But the conferment of powers under the Assam Opium Prohibition Act would not 'convert' them into special Cts, They still remain Cts. constituted under Cr. P.C. They are admitted by subject to the appellate jurisdiction of the H. C. Mr. Barman concedes that appeals against orders of conviction under Chap. IV would lie to the Sessions Ct. or the H. C. as the case may be & orders under Chap. IV are also subject to the revisional jurisdiction of the Ct. In these circumstances even if certain orders of a Ct. are removed from the revisional jurisdiction of the H. C, the Ct. remains subject to the appellate jurisdiction of the H. C. It cannot be treated as a special Ct. within the meaning of the decision of their Lordships of the P.C. The Cts. could not be special Cts for the purposes of the Assam Opium Prohibition Act & ordinary Cts. for purposes of the Cr. P.C. If they were special Cts. not inferior or subject to the jurisdiction of the H. C, they could not be subject to the appellate or the revisional jurisdiction of the H. C. even in regard to orders covered by Chap. IV of the Act. They are Cts. under the Code though the orders of the Sessions Ct. Under Section 17 (3) by reason of the finality attached to them could not be regarded as subject to the revisional or the inherent jurisdiction of the H. C. under the Cr. P.C. This view of the law finds support from 'AIR (20) 1933 Bom 1'. This is a Special Bench decision of the Bombay H. C. The learned Judges laid down that the special Cts. under the Emergency Powers Ordinance 1932 were subject to the appellate jurisdiction of the H. C. because Under Section 39 the H. C. had power to hear appeals in certain cases. In their Lordships view it was immaterial that there was no right of appeal to the H. C. in all cases because if there is a right of appeal in any case to the H. C, the Ct. from the order of which an appeal is allowed becomes subject to the appellate jurisdiction of the H. C. which then can exercise its powers of superintendence in respect of all matters & not only those matters in respect of which a right of appeal is given. In this view even special Cts. may be subject to

the superintendence of the H. C. if the H. C. is the Ct. of appeal in certain cases decided by the special Cts. The question has got no importance now as Article 227, Const, ind. makes no distinction between ordinary & special Ct. & brings all Cts except Cts. constituted under any law relating to the Armed Forces subject to the power of superintendence conferred on the H. Cs. Besides the Assam O. P. Act does not create any new Cts. at all. The powers of superintendence vesting in the H. C, therefore, can certainly be exercised in suitable cases in respect of orders passed under the Act.

25. It still remains to be seen on what grounds the powers of superintendence may of exercised in cases where the orders of the Cts. below have been expressly taken out of the revisional jurisdiction of the Ct. The learned Counsel for the petnr. has urged that even in such cases the H. Cs, have interfered in the exercise of their jurisdiction of superintendence. He has cited three cases in support of this contention. They are '48 Cal 522'; 'Sheonandan Prasad Singh v. Emperor' AIR (5) '1918 Pat 103 : AIR (20) 1933 Bom 1'.

26. The case reported in '48 Cal 522' was decided in 1920, orders Under Section 145, Cr. P.C. were then outside the ambit of the revisional jurisdiction of the H. Cs. The Special Bench of the Calcutta H. C. held that it was well established that the H C. had power Under Section 107, Govt. of India Act, to; set aside proceedings Under Section 145, Cr. P.C. instituted without jurisdiction notwithstanding that orders Under Section 145, Cr. P.C. were not revisable. Earlier authorities to which reference was made in support of this proposition by the learned Judges were 'Jogendra Nath v. Debendra Nath' 26 Cal 128; 'Laldhari Singh v. Sukhdeo Narain' 27 Cal 892; 'Jago Mohan v. Ram Kumar' 28 Cal 416; 'Kulada v. Danesh Mir' 33 Cal 33; 'Sukhlal v. Tara Chand' 33 Cal 68; 'Khosh Mahomed v. Nazir Mahomed' 33 Cal 352. In these cases orders which were final & not revisable under the Cr. P.C. were interfered with on the ground that they were without jurisdiction.

27. In 'A IR (5) 1918 Pat 103' it was held that 'the power of superintendence conferred on the H.C. by Section 15, High Courts Act, is confined to superintendence over those Cts., which are subject to the appellate jurisdiction of the H. C. The Special Tribunals created under the Defence of India Act are, by the

very Act which created them, subject to no appellate jurisdiction whatever.' The question as to what are the necessary conditions for the exercise of the power of superintendence did not arise in that case.

28. In 'AIR (20) 1933 Bom 1' it was held by a Special Bench of the Bombay H. C. that

Powers conferred on the H. C. by Section 107, Govt. of India Act, which is an Act of the Imperial Parliament cannot be controlled by the Governor-General by virtue of Section 65 read with Sch. 5, Govt. of India Act, 1915.

It was further held that H. C. had powers of superintendence over all Cts. for the time being subject to its appellate jurisdiction, & such rights of superintendence include not only superintendence on administrative points, but superintendence on the judicial side too, & that in the exercise of its powers of superintendence the H. C. could correct any error in a judgment of a Ct. subject to its appellate jurisdiction notwithstanding the fact that there was no right of appeal to the H. C. in all cases. Dealing with the extent of the powers of superintendence, their Lordships expressed the view that the exercise of the power of superintendence is not the same thing as the hearing of an appeal. The H. C. has a discretion to revise or set aside any conviction under its powers of superintendence, but it must exercise its discretion on judicial grounds, & only interfere if consideration of justice require it to do so. The powers of superintendence are wide enough to enable the H. C. to alter a sentence, but H. C. is not justified in altering the sentence which the Mag. has thought fit to inflict merely because it would have inflicted a different sentence. It must be satisfied that the Mag. has erred on some point of principle.

29. Nanavati, J. expressed the opinion that if a Ct. had failed to exercise its discretion in assessing the sentence that would be a proper ground for interference.

30. According to Mr. Basu the authorities reld. on are still good law. The Const. Ind., according to him, has restored to the H. Cs. the power of superintendence which they were exercising over all Cts. subject to their appellate Jurisdiction, though now the power can be exercised even over Cts. which are not subject to

the appellate Jurisdiction of the H. C. but are functioning within the territories in relation to which the H. C. exercises its powers.

31. I agree with him in the view that the circumstances under which a H. C. may exercise powers of superintendence have not been altered, by the change in the law & the powers of the H. C. in this respect are still the same. Caset decided Under Section 107 bearing on the extent of the power of superintendence or the conditions under which it may be exercised are, therefore, still valuable guides in interpreting Article 227, Const. Ind. In this view of the matter a H. C. would be perfectly justified, on the authority of the Special Bench decisions of the Calcutta & Bombay H. Cs. discussed above, in interfering in the exercise of its power of superintendence if the order of a Ct. within its territorial limits is without jurisdiction or the Ct. has erred on some point of principle & the result of the error was an unjustified sentence.

32. Speaking generally, the actual exercise of the power of superintendence was limited to cases where the order of a Ct. subject to the appellate jurisdiction of the H. C. though not subject to revision was vitiated by. the abuse, excess or want of jurisdiction, or where failure or miscarriage of justice resulting from some illegality or irregularity in the proceeding could not be cured in any other way. In '33 Cal 33' it was held that the Ct. will not interfere Under Section 15, Charter Act, unless it was satisfied that the party seeking the interference had been prejudiced by the proceedings in the Ct. below.

33. In another case reported at p. 69 of the same Vol. 'Sukhlal v. Tarachand' 33 Cal 68 at p 69, it was held that,

the power of interference of the H. C. in cases Under Section 145, of the Code is only Under Section 15, Charter Act. It is discretionary & ought to be exercised with great caution. Where a lower Ct. has proceeded with irregularity, the H. C. should not interfere unless it can be shown that some one has been materially prejudiced by such irregularity. If the subordinate Ct. has acted without jurisdiction, the H. C. will interfere.

Abuse of jurisdiction was consid. a sufficient Justification for interference under the Charter Act in '27 Cal 892' also.

34. In 'Ponnappa Iyengar v. Ramanuja' AIR (7) 1920 Mad 847, it was held that an order Under Section 144 not revisable Under Section 435, Cr. P.C. could only be revised in virtue of the jurisdiction conferred on the H. C. by Section 107, Govt. of India Act, but it is only in very rare cases that h; C. will interfere, even when there is a question of jurisdiction. If there is no question of jurisdiction it would interfere only if very great miscarriages of justice would otherwise result.

35. Two cases from the Allahabad H. C. also may be refd. to. In 'Jhingal Singh V. Ram Partap' 31 All 150, it was held that

where proceedings are in intention, in form 4 in fact proceedings under Chap. XII, Cr. P.C. by a Mag. duly empowered to act under that Chapter, the H. C. has no power to send for these proceedings either under the Code or Under Section 15, Charter Act.

36. In 'Sundarnath v. Emperor' 40 All 364, qualification was added to the above proposition & it was held that

it was open to a party in such a case to satisfy the H. C. that the property of which he is entitled to possession has been dealt with by an order which has no legal authority at all & he may do so by an affidavit or by any other reliable manner, & thereby invoke the superintending power of the Ct.

37. It may be noticed that in no case there was interference with an order which was not revisable on the ground that any question of fact had been wrongly decided. In fact, in 'Chintaraoni v. Jagannath' AIR 1915 Cal 644, it was held chat even if the fact of possession is wrongly decided in a case Under Section 145, it was not a finding with which the H C. could interfere under the Charter Act.

38. In 'AIR (24) 1937 Bom 153' D.B. of the Bombay H. C. held that

powers of superintendence Under Section 107, Govt. of India Act, 1915, are not ordinarily meant to be exercised where no power of revision or interference exists

under Cr. P.C. & such powers ought to be exercised only in rare cases where an Obvious miscarriage of justice cannot be otherwise prevented. Such powers are not Intended to be invoked in order to get round any of the express provisions of the Cr. P.C.

The rules so stated should also apply where the revisional Jurisdiction of the Ct. is taken away by a local or special Act. In the Bombay case AIR (24) 1937 Bom 153' the conviction was apparently wrong & was set aside by the Ct. in the exercise of its powers of superintendence.

39. It is apparent from the examination of the authorities discussed above that no inflexible rule of universal application may be laid down as to the conditions under which the H. C's power of superintendence may be exercised. The power now vesting in the H. Cs. by virtue of Article 227, Const. Ind. is the same which the H. Cs. exercised Under Section 15 of the Charter Act & then Under Section 107, Govt. of India Act, Speaking generally this power of superintendence places at the disposal of the H, C, an extraordinary reserve of power in order that there should be no species of injustice which the H. C. may not be able to cure. Since the jurisdiction is extraordinary it should not serve ordinarily as a substitute for revisional jurisdiction in cases where the revisional jurisdiction has been taken away from the H. C, by a competent Legislature, though even in such cases absence, excess or abuse of jurisdiction will no doubt justify interference. The H. C. may also draw on its powers of superintendence, to avoid or prevent obvious miscarriage of justice. It shall not, however, be justified in getting round any express provision of statute depriving it of its revisional jurisdiction by resorting to its extraordinary jurisdiction except in cases mentioned above. It will not also be justified in constituting itself a Ct. of appeal & substitute its own view on findings of fact after a minute scrutiny of the evidence, though the extraordinary jurisdiction may be utilised for correcting miscarriages of justice which have been occasioned by patent errors of law or procedure which cannot be corrected otherwise.

40. Learned counsel for the petnr. has urged that the exercise of the extraordinary powers of the H. C. under Article 227(1) of the Constitution is called for in this case for two reasons. He has first urged, though this point was not raised in the grounds

contained in the petn., that the order of externment is not based on any admissible evidence. He points out that the evidence which forms the basis of the order, even if taken to be the evidence of general repute, (which he disputes) is not admissible. In support of this contention he has reld. on the language of Section 11, Clause (7), Assam Opium Prohibition Act. He points out that Clause (7) of this section limits the application of the rule of evidence embodied in it to enquiries Under Section 11 of the Act & cannot be applied to proceedings under Chap, VI of the Act, Chap. V lays down the procedure for demanding security from habitual offenders with a view to preventing them from committing certain offences. Clause (7) lays down that

for the purposes of this section, the fact that a person is a habitual offender within the meaning of Sub-section (1) may be proved by evidence of general repute or otherwise.

Section 17 (1) of Chap. VI which deals with externment of habitual smugglers provides that provisions in Chap. V of the Act shall in so far as they are applicable apply to all proceedings Under Section 16. It is contended that the words 'for purposes of this section' occurring in Clause '7) of Section 11 limit the operation of this clause to proceedings under Chap. V only and the rule of evidence embodied in it cannot be applied to proceedings under Chap. VI notwithstanding the fact that Section 17 (1) permits the application of the provisions of Chap. V to proceedings under Chap. VI in so far as they are applicable.

41. I have found it difficult to accept this argument. Chap. VI does not prescribe any separate procedure for proceedings under it. The provisions contained in Chap. V have to be applied in so far as they are applicable. All clauses of Section 11 which prescribe the procedure for proceedings under Chap. V, therefore, shall apply in so far as they can be applied to proceedings under Chap. VI. In other words, if there is no inherent difficulty in applying provisions relating to procedure contained in Section 11 of Chap. V, they should be applied to proceedings under Chap. VI. The proceedings under Chap. V are preventive in nature & are directed to demanding security from persons habitually committing offences Under Section 5 or 6 of the Act. Section 5 (a) covers cases of persons who import or export

opium. Habitual importers of opium can be dealt with Under Section 11. By virtue of the provisions contained in Clause (7) evidence of general reputation would be admissible against them. Under Section 16, a habitual smuggler of opium may be required to show cause why he should not be externed. The fact that he is a habitual smuggler would be extremely difficult, if not impossible, to prove if evidence of general reputation may not be admitted in proof of it. On principle there appears to be no reason why evidence of general reputation should have been excluded if the fact to be proved is that a person is a habitual smuggler, of opium when evidence of general reputation has been recognised as good evidence for showing that a person is a habitual importer of opium Under Section 11. The rule of evidence which allows evidence of general reputation to be adduced against a habitual importer can without any difficulty or objection be applied against a person in order to prove that he is a habitual smuggler. There is no inherent difficulty in the application of the rule; nor can there be any objection to its application on grounds of principle. On the other hand, it seems eminently desirable that the fact that a person is a habitual smuggler should be capable of proof by evidence of general reputation or otherwise as laid down in Clause (7) of Section 11.

42. The learned Counsel for the petitioner has laid considerable emphasis on the words 'for the purposes of this section'. I do not think that the Legislature by using these words deprived itself of the authority to apply the rule of evidence embodied in Clause (7) of Section 11 to any other proceedings which may form the subject matter of any subsequent Chapter. Clause (7) no doubt is confined in its application to proceedings Under Section 11. But that would not preclude the Legislature from applying that clause to proceedings under Chap. VI. When laying down that provisions contained in Section 11 shall apply as far as they are applicable to proceedings under Chap. VI, the Legislature left it to the Ct. to determine which of the provisions relating to procedure contained in Section 11 could be applied to externment proceedings. If from its very nature a particular provision cannot apply to externment proceedings, it would not be applied then. But, where there is no such difficulty, the provisions contained in Section 11 should be applied to externment proceedings. Clauses of Section 11 which may be regarded as applicable are Clauses (3) to (8). Clause (2) also would apply with suitable modifications. So far as Clause (7) is concerned, it is as applicable as

Clauses (3) to (8). The words 'for the purposes of this section' in Clause (7) of Section 11 were apparently employed to indicate that evidence of general reputation which is generally hearsay in character & therefore normally inadmissible is made admissible for a limited purpose. The whole of the clause including the words 'for the purposes of this section' could be read as part of Section 17 of the Assam Act. The Legislature could not have aimed at or intended to impose any restriction on its own power by using these words. The language of Clause (7) has been borrowed from Section 117, Cr. P.C. where the same phraseology is employed. I do not think that the connotation of these words is that this rule of evidence should not apply to proceedings under Chap. VI even though the Legislature expressly authorised its application to these proceedings subject to the condition of its applicability. This interpretation has the merit of advancing the remedy & suppressing the mischief.

43. The conclusion to which the above process of reasoning leads is that evidence of general reputation is admissible in externment proceedings under Chap. VI, of the Assam Opium Prohibition Act. I have come to this conclusion with considerable hesitation as my Lord the Chief Justice, whose views I hold in great esteem, has taken a different view of the matter.

44. The second contention raised by the learned Counsel is that even if evidence of general reputation is held to be admissible, the bulk of evidence relied on by the Cts. below is not evidence of general reputation. He characterises the evidence as no better than hearsay. In order to show what really is conveyed by the expression 'evidence of general reputation' occurring in the Assam Opium Prohibition Act, he has cited authorities Under Section 117, Cr. P.C. which permits certain matters Under Section 110 of the Cr. P.C. to be proved by evidence of general reputation.

45. In '*Isri Pershad v. Queen Empress*' (23 Cal 621), the first case cited by the learned Counsel for the petitioner, the learned Judges observed that

a man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, & if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen whether they happen to know him or not, as a man of good reputation, that is strong evidence that he is a man

of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him look upon him as a dangerous man & a man of bad habits that is strong evidence that he is a man of bad character. But it cannot be said that because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence Under Section 117 of the Code.

(46) Three cases from the Allahabad H. C. have been reld. to, during the course of the arguments. The only case & the earliest out of these three reld. on by the learned Govt. Advocate was 'Bechal v. Emperor' AIR (1) 1914 All 280. In this case, Chamier, J, observed as follows:

Evidence of general repute may be either evidence as to the general opinion of the neighbourhood or community in which the person concerned lives or to which he belongs, or the personal opinion of the witnesses who are examined. The test of the admissibility of evidence of general opinion is whether it shows the general reputation of the man, not necessarily the opinion of the entire community to which he belongs, but at least the opinion of a considerable number of persons. It must not be merely the repetition of what one or two persons have said to witnesses.

The learned Judge observed further that:

A witness to general reputation may be examined & cross-examined as to his means of knowledge & when he gives his own opinion, he may be asked to give the grounds of his opinion & to give the names of the persons whom he has heard speak against the character of the person concerned.

Walsh, J., held in 'Emperor v. Angnu Singh' (45 All 109), that:

evidence of general repute by persons who have no personal knowledge of the accused & know nothing of his business & circumstances, is not sufficient in itself to justify an order.' & in support of this proposition he reld. on 'Kallu v. Emperor' 19 All LJ 39. It is noteworthy that evidence of general repute even though given by persons who had no knowledge of the accused & knew nothing of his circumstances was not held inadmissible. All that was held was that by itself it

would not be sufficient to justify an order Under Section 110.

47. A.D.B. of the Allahabad H.C. dealing with a case Under Section 110 (reported in 'Emperor v. Ram Lal' 51 All 663, have illustrated what evidence of general repute may mean. They observed as follows:

A man's general repute, whether deserved or not, is just as much a fact as any other fact which can be proved by a witness. If the witness is a witness to 'general repute' he may say 'The accused has the general reputation of being a man who habitually commits such & such offences'. In addition to this the witness may properly be put a few questions by the prosecution to show that he himself is in a position to know what the general reputation of the accused is. Further than this, on the mere question of 'general repute' it is unnecessary & generally undesirable to go in examination-in-chief. If the accused is defended, his counsel, if he sees fit, can ask any questions that may go to show whether the witness is really telling the truth when he says that the accused's 'general repute' is so & so. He may question him if he thinks fit as to when & under what circumstances he has heard the character of the accused. He may, in fact, test the credibility of the witness as to the real existence of the alleged general reputation in any such legitimate way. The Mag. is, of course, at liberty to ask similar questions; & where the accused is not defended, or the Mag. is not himself satisfied with the cross-examination, he should satisfy himself by asking such questions as may seem desirable. It is impossible & we do not desire to lay down the exact course which such examination may take, but we do desire to make it clear that the mere production of a string of witnesses who say that an accused person's general repute is so & so, can carry very little weight unless some attempt has been made to show that he is a person in a position to know the general repute, & there has been some reasonable attempt by the counsel for the accused or by the Ct, to check the value of the evidence.

Addison, J., held in 'Kundan v. Emperor' 9 Lah 133, that:

The general reputation of a man is that which he bears amongst his fellow townsmen or in the neighbourhood in which he lives. Mere suspicion of complicity in this or that isolated offence is not evidence of general reputation.

48. In 'Ranga Reddi v. Emperor' 43 Mad 450, Seshagiri Ayyar, J., expressed the opinion that the evidence of general reputation must relate to particular instances which have come to the knowledge of the deponent & so must be specific. Mere beliefs & opinions without reference to acts or instances which have induced the witnesses to form the opinion, can hardly be regarded as evidence of reputation. Under Section 117, Clause (3). While considering what evidence of general reputation meant for purposes of Section 117, Clause (3), the learned Judge referred to an earlier case reported in 'In the matter of Pedda Sivareddi', (3 Mad 238). In that case, the learned Judges had held that:

Although, when witnesses are examined as to general character, their testimony is not of much value as to the habits of a suspected person, unless they can in support of their opinion, adduce instance of the misconduct imputed, when the question is only as to his reputation, the evidence of witness, if reliable, is not without value, though they may not be able to connect suspected person with the actual commission of crime.

49. The learned Judges' comment on this view was that he was not sure if he understood this judgment. In his opinion the evidence on which a Mag. has to base his conclusion that a man is a habitual robber, a habitual receiver of stolen property, etc., must relate to particular instances which should have come to the knowledge of the deponent & opinion without reference to instances which have induced the witnesses to form the opinion can hardly be regarded as evidence of reputation within the meaning of Section 117, Cl. (3). 'Habitual criminality' he proceeded to observe, cannot be regarded as established by the repetition of beliefs & opinions.'

50. With great respect to the learned Judge it may be stated that when the Legislature laid down that the fact that a man is a habitual robber or habitual receiver of stolen property, etc., may be proved by evidence of general reputation, it cannot be said that habitual criminality cannot be regarded as established by the repetition of beliefs & opinions. Beliefs & opinions of a large body of persons knowing a particular individual & living in the neighbourhood or in the same locality with him constitute his general reputation. To say that the fact that a person is a

habitual thief cannot be established by these beliefs & opinions would be to exclude evidence of general repute which the Legislature has expressly allowed to be produced in cases covered by Section 117, Cr. P.C. by way of an exception to the normal rule. Mere evidence of general repute may not be regarded as enough in a particular case. But it is a very different thing to say that evidence of general repute where witnesses are unable to refer to particular acts or instances is not evidence of general repute or that it is not relevant. The learned Judge himself did not discard the evidence of general repute altogether. He merely found that it was not sufficient to form the basis of an order for security.

51. Moore, J., in the same case held that:

the evidence which is required is that of respectable persons who are acquainted with the accused, & live in the neighbourhood & are aware of his reputation.

It must be the general opinion & 'not merely the repetition of what certain persons have said to the witnesses'. The test of the admissibility of the evidence of general opinion according to the learned Judge is whether it shows the general reputation of the accused & it should at least be the opinion of a considerable number of persons.

52. In 'D. Narsiah v. Raman Chetty' 27 Cal 93 (sic), it was held that the reputation which the person is found to have means the reputation of that person in the neighbourhood in which he resides.

53. The examination of authorities to which I have refd. leads to the conclusion that general repute or reputation of a man may be proved like any other fact in issue. Witnesses may depose to what the reputation of a particular individual is. A witness giving evidence as to the reputation may depose that a particular individual has the reputation of being a habitual smuggler. Such a witness may be examined & cross-examined as to his means of knowing the reputation of the individual he is talking about. The value of evidence that he gives would no doubt depend to a great extent on whether he is in a position to know of the reputation of the man against whom he is deposing. As observed by Moore, J., in '43 Mad 450' at p. 459:

Hearsay evidence amounts to evidence of repute & is admissible for the purpose of Section 110, Cr. P.C. & this provision of the law being an exception to the general rule of evidence in such cases evidence of reputation though hearsay is admissible.

The evidence of repute has also been made admissible by the Assam Opium Prohibition Act in certain proceedings. It is essentially based on hearsay. Where, therefore, reputation is spoken of, or described as a fact even though the reputation came to be known by hearsay the evidence is not inadmissible. The weight that should attach to evidence of general repute would vary not only in the circumstances of each case but in the case of each witness. The evidence will have to be weighed in relation to other facts elicited from the statement of the witnesses. How this evidence should be tested has been explained in '51 All 663 at p. 671' & I am in respectful agreement with view expressed in this case.

54. General repute has to be distd. from mere rumour. If a person is suspected of a crime in a particular case by some & there are others who do not share the suspicion, the evidence of those who suspect him cannot be described as evidence of general repute. But, if an individual is suspected in several cases & in course of time people begin to believe & talk about him as a thief or a robber or a smuggler by habit, he' may be said to have acquired the reputation that is attributed to him. The roots of a bad reputation would be ultimately found planted in rumour & it would be difficult to lay down any rule as to how many instances or how long it should take the rumour to ripen into reputation. All that it 'means & implies is what is thought of a person by others & the general reputation of a person is merely the collective opinion of those in whose midst he lives. It need not necessarily be the opinion of the entire community. Evidence which discloses the existence of collective opinion is evidence of general repute. It remains to be seen whether in the view that I take of what evidence of general repute means, the bulk of evidence in this case can be regarded as evidence of general repute.

The learned Counsel has refd. us to the statements of P. Ws. 1, 2, 3, 6, 9, 10, 13, 19, 22, 34, 38, 51, 64, 82, 91 & 92 in particular. (After discussing evidence of witnesses his Lordship proceeded:

55. Judged by the test laid down above, I have no reason to doubt that these witnesses have deposed to the general reputation of the petitioner. Their evidence, therefore, cannot be dismissed as not covered by the expression 'general repute'. The probative value or force that should attach to each statement would depend on a consideration of the statements separately in the light of other facts stated or admitted by the witnesses in examination-in-chief & in cross-examination. In some cases the statements may not be of any great value. In other cases the statements may be very valuable. But I entertain no doubt that witnesses are witnesses of general repute & there cannot be any general discarding of the evidence on the ground that it is evidence which cannot be described as evidence of general repute.

56. The learned Counsel has refd. us to the statements of some 16 witnesses. The prosecution have examined no less than 106 witnesses. It is obvious that such a large number of witnesses should not have been consd. necessary to prove that the petnr. was by habit a smuggler of opium. It should have been possible for the prosecution to select a smaller number. But the prosecution really set out to prove that the reputation of the petnr. had travelled far beyond the limits of the town of Dibrugarh, in the entire district of Lakhimpur & even beyond (Abor Hills) & that he was regarded as a leader or a Prince among smugglers, with a very efficient organisation which had defeated the efforts of the Excise Dept. at detection. Even so, the number of witnesses could have been considerably curtailed. The reputation of an individual being the collective opinion of the people amongst whom he lives should not be very difficult to establish. (After discussing evidence of other prosecution witnesses his Lordship proceeded:)

57. The learned Ses. J. when considering the evidence left out of account the statements of the Excise staff in regard to their activities bearing on their recent attempts to connect the petnr. with the recoveries of opium from the people living in his neighbourhood or under his influence. He also did not attach any importance to the recovery of the two tin boxes found from the house of the petnr. But he took into consideration the fact that his house had been searched on several occasions because of suspected complicity in opium crimes, as supporting the evidence of general reputation that was led against the petnr. He also consd. the

circumstantial evidence afforded by the fact that the petnr. suddenly acquired wealth in a manner which he could not satisfactorily explain. He refd. to the fact that in 1947 he got himself enrolled as a voter by describing himself as an employee of one Isaque Khan at a salary of Rs. 110/- p.m. He also noticed that the accused was not paying any income-tax.

58. The defence evidence is also voluminous. No less than 61 witnesses were examined. Some witnesses are men of status & position. These witnesses have deposed that the accused makes his living by honest means, that he was the lessee of 'hats' & was dealing in fire-wood, paddy, mustard, pulses, tobacco, etc. etc. They also deposed that they had not heard of him as a dealer in contraband opium. Two at least out of the defence witnesses, e.g., D. W. 6 (Dilip Chandra Das) & D. W. 8 (Taleb Khan) admitted having heard the petnr. being spoken of as a dealer in contraband opium. There are two others also who deposed to having heard of him recently as a smuggler of opium.

59. The evidence on both sides has been fully consd. by the learned trial Mag. & also by the learned Ses. J. All aspects of the controversy have been carefully examined. The conclusion arrived at concurrently by the Cts. below is that the accused is by reputation a habitual smuggler of opium. The finding is on a question of fact, it rests on oral testimony & some circumstantial evidence also. Without a careful and minute examination of the evidence on both sides, it is not possible to say whether a different conclusion is possible to arrive at. But there is no justification for this Ct. to weigh the evidence for itself in the exercise of its power of superintendence under Article 227 of the Constitution in order to find out if a different conclusion is possible on the appreciation of evidence particularly where, its revisional jurisdiction is excluded. The jurisdiction as held above is extraordinary in character. Its exercise is limited to rare cases where apparent miscarriage of justice caused or induced by illegalities or irregularities cannot be prevented otherwise. Orders without jurisdiction may also be interfaced with. In the case before us there is no defect of jurisdiction; nor can it be said that any illegality or irregularity has either vitiated the trial or caused serious prejudice. It is also not case in Which it could be said that there has been an apparent miscarriage of justice. The evidence of general reput was admissible Under Section 17 (2) of the

Assam Act and the bulk of the evidence relied on by the learned Sessions Judge was evidence of general reputation and admissible as such. What weight should have been attached to the statements of witnesses on either side is a matter for which powers of superintendence of this Court may not be invoked. Even where a certain jurisdiction could be invoked in furtherance of justice, it may not be utilised where the only question is of the weighing or the appreciation of evidence. In this case the appellate order has been made final by statute. It would be getting round that statutory provision if appellate functions are assumed & evidence is weighed afresh in order to see whether the finding arrived at by the Court below can be substituted by a different finding. Without, therefore, going into the question as to whether on the material before them the Courts below have given a correct finding, I am of opinion that no case has been made out for the exercise of this Court's power of superintendence for the purpose of quashing the proceedings or the order of commitment itself. A still stronger reason against the adoption of this course is that Article 227 may not be applied retrospectively.

60. It has also been urged that prosecution has failed to prove any specific instance of the smuggling of opium. The prosecution case was that the petitioner was by habit a smuggler. The bulk of evidence given in support of the case was evidence of general reputation. It was not the case of the petitioner that there was no smuggling going on. The Assam Opium Prohibition Act was passed to prohibit consumption of opium & its smuggling in the province of Assam. The prevention of smuggling was one of its declared objects. Chaps. V & VI deal with preventive measures against habitual dealers in & smugglers of opium. A reference to the statement of P. W. 102, the Excise Inspector of Dibrugarh, would show that Sree Gopal, a man of Dibrugarh town, was found in possession of 20 seers of opium. He was convicted. In 1942, one Sona Gowala was found in possession of 19 seers of opium. In that case Ishque, uncle of the accused, was also prosecuted. Both were acquitted. In 1944, Khurshid Alam was found in possession of 5 tolas of illicit opium. The house of the accused was admittedly searched on several occasions on suspicion of complicity in opium offences. P. W. 1 deposed to have defended the accused persons in about 500 to 1000 cases during the last 20 years. The evidence of the prosecution witnesses who are connected with Prohibition propaganda shows that there was an organised effort to persuade

people to desist from taking or smoking opium. The evil has, however, persisted & opium is being supplied to the addicts by smugglers. P. W. 71, Wairam Singh, was a non-official Jail Visitor & was for some months honorary Prohibition Officer. As a Political prisoner he met convicts in opium cases In Jail & learnt from them that they got their supplies of opium from the petnr.

61. D. W. 28, Khan Bahadur Lutfur Rahman, retired Asst. Traffic-Supdt., & Ex-Chairman of the Dibrugarh Local Board, the most important defence witness, stated in cross-examination that he was aware that smuggling of opium was being carried on secretly though he was not aware that big smugglers had big organisations. He further stated that some smugglers were carrying on the business with full knowledge of the Excise Officers. He had also heard some people talking about the accused as an opium smuggler after the last Municipal Elections. It cannot be seriously argued that even the existence of smuggling is in doubt.

62. It was not suggested in the trial Ct. or in the Ct. of appeal that there was no smuggling going on or that without any proof of a specific instance of smuggling an order of externment could not be passed in law. 'It has, however, been urged in this Ct. that no specific instance of smuggling has been proved. If any specific act of smuggling could have been proved against the petnr. such preventive action as was sought to be taken against him would probably not have been considered necessary. Instances in which other people have been found smuggling would not connect the petnr. with smuggling necessarily. That there was extensive smuggling going on was the basis of the entire inquiry. Its existence was not in dispute. Proof of specific instances was not necessary in law as the fact that a person is a habitual smuggler may be proved by evidence of general repute or otherwise. Evidence of general repute alone may be considered enough in a particular case. In this case there is other evidence also. The proceedings culminating in the order of the externment are in no sense unreal therefore. On the contrary, the foundation of the proceedings is an evil, the existence of which has been deposed to & indicated by prosecution witnesses, was admitted by the most important defence witness & not denied at any stage by the petnr.

63. In the course of the hearing of this petn. the question as to whether Sections 16 & 17, Assam Act XXIII (23) (Assam Opium Prohibition Act) of 1947 had become void inasmuch as they offended against Article 19(1)(d) read with Clause (5) of the Article was raised. Mr. Basu supported the contention & urged that externment, whether authorised by Central or Provincial Act, would offend against Clause (5) of Article 19 regardless of its duration. He also urged in the alternative that externment from the entire State would at least be unreasonable under Clause (5) of the Article. In support of his contention he relied only on 'Dr. N. B. Khare v. State of Delhi' AIR (37) 1950 SC 211 : 1950 SCR. 519.

64. The impugned provisions of the Assam Act XXIII (23) of 1947, are as follows:

Section 16: Whenever a Dist. Mag. or a Sub-divisional Mag. or a Mag. of the first class specially empowered by the Provincial Govt. in this behalf receives information that any person within the limits of his jurisdiction is by habit smuggler of opium, such Mag. may, in the manner hereinafter provided, require such person to show cause why he should not be externed from the Province or from any part thereof for such period as the Mag. may deem fit.

Section 17 (1) The provisions in Chap. V of this Act shall, in so far as they are applicable, apply to all proceedings Under Section 16, & if upon such inquiry the Mag. is satisfied that it is necessary to extern the person in respect of whom the inquiry is made, he shall make an order accordingly.

2. The Mag. making the order under Sub-section (1) shall direct the person concerned to leave the Province within such time, by such route or routes & for such period as may be stated in the order.

3. Any person against whom an order has been made under Sub-section (1) may appeal to the Ct. of Ses., whose decision shall be final.

65. Section 16 authorises District or Sub-divisional Mags, or Mags, of the first class specially empowered by the Provincial Govt. to require any person against whom information has been received that he is by habit a smuggler of opium to show cause why he should not be externed from the Province or from any part

thereof for such period as the Mag. may deem fit. Section 17 (1) lays down the procedure for the inquiry. By virtue of this clause the provisions of Chap. V of the Act have been made applicable to proceedings under Section 16. If after necessary inquiry as laid down in the Act the Mag. is satisfied that it is necessary to extern the person in respect of whom the inquiry is made, he shall make an order as provided in Section 16. If the person, against whom an order has been made or confirmed in appeal as the case may be, fails to comply with the order within the time specified therein or after complying with the said order returns to or remains in the area from which he was externed before the expiry of the period stated in the order, he is liable to be punished with R. I. for a term which may extend to ten years, & with fine which may extend to five thousand rupees Under Section 18 of the Act.

66. The main contention before us is that externment is an unreasonable restriction on the fundamental right guaranteed to every citizen by Clause (d) of Art 19, Const. Ind. Clause (d) says that every citizen has the right to move freely throughout the territory of India. The right, however, is not absolute. It could be curtailed & the extent to which it may be curtailed is laid down in Clause (5) of Article 19 which runs as follows:

Nothing in Sub-clauses (d), (e) & (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said Sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

67. The learned Advocate General has argued that if it is possible to extern an individual according to the procedure established by law, the case would be covered by Article 21 & not by Article 19 of the Constitution. His contention is that externment affects the right of personal liberty guaranteed by Article 21. He thinks that the Article would apply even if there is no total loss of personal liberty. He has also urged that the provision of law contained in Sections 16 & 17, A. O. P. Act are not unreasonable & do not offend against the (provisions?) contained in Article 19(5) of the Constitution.

He supports the order in question even on the same grounds.

68. It may be possible to say a great deal in support of this argument but it cannot prevail for the simple reason that even if externment may be regarded as amounting to deprivation of personal liberty inasmuch as it prevents the individual externed to move freely throughout the territory of India, the individual concerned, if he happens to be the citizen of India, has got an additional right where his freedom to move freely throughout the territory of India is taken away. Article 21 allows certain guarantees regarding life & personal liberty to all persons. The citizens of India have a further right so far as their freedom to move freely throughout the territory of India is concerned. This particular freedom cannot be curtailed except in the interest of general public or for the protection of the interests of any Scheduled Tribe. It is further necessary that the curtailment or restriction on the exercise of the right should be reasonable. These are additional rights which] are not conferred by Article 21. Where, therefore, a citizen can bring his case under Article 19, he can ask the Cts. to consider whether the restrictions & also the law enabling the restrictions are within the ambit of Clause (5) of Article 19. Assuming then that the case could be brought within the scope of Article 21, it would be open to the petnr., admittedly a citizen, to claim that the impugned legislation should be examined in the light of tests laid down by 01. (5) of Article 19.

69. It cannot be disputed now that the externment impairs the right guaranteed to all citizens to move freely throughout the territory of India. The matter may be regarded as concluded by authority. In two cases of externment the Bombay H. C. applied Article 19. In 'Jesinghbhai v. Emperor' : AIR1950 Bom363), the petnr. was ordered not to be in any area in the district of Ahmedabad except with the permission of the District Mag. of Ahmedabad. The case was treated as covered by Article 19. In 'Abdul Rahman v. Emperor : AIR1950 Bom374 , the validity of Section 48 (3), Bombay District Police Act IV (4) of 1890 under which the petnr. was ordered to remove himself from the State of Bombay came into question. This case was also treated as coming within the ambit of Article 19 of the Constitution. In 'Brij Narain v. State of Bihar' AIR (37) 1950 Fat 322, the validity of the provisions contained in Clause (b) of Sub-section (1) of Section 2, Bihar Maintenance of

Public Order Act (Act III (3) of 1950), under which the petnr. was forbidden from going to any place in the districts of Singbhum & Manbhum was called into question. In ' : [1950]1SCR519 ', the petnr. was directed by the Dist. Mag. of Delhi not to remain in the Delhi District & immediately to remove himself from the District & not to return to it. The order was under the East Punjab Public safety Act (Act V (5) of 1949). In the last mentioned two cases also the petnrs. were regarded as entitled to the protection afforded to them by Article 19 & the question in each case was whether the legislature had excluded (exceeded?) the limits imposed on its authority by Clause (5) of Article 19, In all the cases brought to our notice where the order affected the freedom to move freely throughout the territory of India, the law making such an order was examined in the light of provisions contained in Article 19, Clause (5). This matter, therefore, may be regarded as outside the pale of controversy.

70. The question whether the validity of the legislation permitting restrictions on the right to move freely throughout the territory of India is Justiciable is also concluded by authority. It is open to the Cts. to consider the reasonableness of the restrictions. It is also open to the Ct. to examine the procedure to be followed before any restrictions on the right to move freely throughout the territory of India can be imposed. The question was before their Lordships of the S.C. in ' : [1950]1SCR519 ' & though all the learned Judges were not agreed on all the points in the case, there was unanimity on, this point. According to the learned Chief Justice

Clause (5) must be given its full meaning. The question which the Ct. has to consider is whether the restrictions put by the impugned legislation on the exercise of the right are reasonable or not. The question whether the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause. The Ct., on either interpretation, will be entitled to consider whether the restrictions on the rights to move throughout India, i.e., both as regards the territory & the duration, are reasonable or not. The law providing reasonable restrictions on the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness

of the restrictions has to be consid. with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Ct. the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years externment or ten years externment the question whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the Ct. under Clause (5). Similarly, if the law provides the procedure under which the exercise of- the right may be restricted, the same is also for the consideration of the Ct., as it has to determine if the exercise of the right has been reasonably restricted.

71. This view was shared by Fazl Ali, J. & Patanjali Sastri, J.; Mukherjea, J. who dissented from the majority view on the question of the validity of the legislation which was before the Ct. & with whom Mahajan, J, agreed expressed himself as follows:

In Clause (5) the adjective 'reasonable' is predicated of the restrictions that are imposed by law & not of the law itself; but that does not mean that in deciding the reasonableness or otherwise of the restrictions, we have to confine ourselves to an examination of the restrictions in the abstract with reference merely to their duration or territorial extent, & that it is beyond our province to look up to the circumstances under which or the manner in which the restrictions have been imposed. It is not possible to formulate an effective test which would enable us to pronounce any particular restriction to be reasonable or unreasonable 'per se'. All the attendant circumstances must be taken into consideration & one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. The question of reasonableness of the restrictions imposed by a law may arise as much from the substantive part of the law as from its procedural portion.

72. It may, therefore, be regarded as settled law that it is open to the Ct. to consider the reasonableness of the restrictions themselves & also the procedural part of the law which must be followed before the restrictions authorised by the impugned law can be imposed. It has been contended from the side of the petnr. that the restrictions which the Assam Opium Prohibition Act permitted the Ct. to

impose are unreasonable both from the view point of duration & territory.

73. I do not think the contention has any force. So far as duration is concerned, Section 16 of the Act provides that the Mag. may require the person to show cause why he should not be externed from the Province or from any part thereof for such period as the Mag. may deem fit. The alleged unreasonableness pointed out by the framed counsel is that the section fixes no maximum period for which a citizen may be externed. He thinks that because the maximum has not been fixed, the Cts. have been given the authority to extern a man for an unlimited period or even for life ti therefore the provision -cannot be justified if tested by the touch-stone of reason.

74. The argument loses sight of the fact that a Mag. acting Under Section 16, Opium Prohibition Act is dealing with habitual smugglers of opium. He has been given the authority to fix the period. His order is subject to appeal to the Ct. of Sessions & I have already come to the conclusion that the orders under this section would also be subject to the supervisory jurisdiction of this Ct. which Article 227 of the Constitution, confers on it.

75. The legislature left the specification of the period to the Cts. This would have been necessary even if a maximum period had been fixed though in that case the Ct. could not have gone beyond the prescribed maximum. Can it be said that the failure to fix the maximum duration for externment would alone be sufficient to make the provision of law unreasonable? It may not be possible for the Legislature to fix the maximum period. The provisions of Chap. VI of the Opium Prohibition Act, are preventive in character. They aim at preventing smuggling of opium which no one in Assam can import, except (sic) or possess except in cases specifically exempted. Fixation of a maximum period may possibly have defeated the very purpose of the Act. But, even if it was not the case, it cannot be said that in leaving the specification of the period of externment to the Mag, whose decision is subject to judicial review & scrutiny, the Legislature acted unreasonably.

76. Reliance has been placed on the observations of Mukherjea, J. in : [1950]1SCR519 where he dealt with the provisions contained in East Punjab Safety Act, (Section 4, Sub-section (3)). He observed as follows:

It will be seen from this sub-section that there is absolutely no limit as to the period of time during which an externment order would remain in force if the order is made by the Provincial Govt. The Provincial Govt. has been given unlimited authority in this respect & they can keep the order in force so long as they choose to do so. As regards orders made by a Dist. Mag., the period indeed has been fixed at three months, but even here the Provincial Govt. is competent to extend it to any length of time by means of a special order. The law does not fix any maximum period beyond which the order cannot continue; & the fact that the Act itself would expire in August 1951 is in my opinion, not a relevant matter for consideration in this connection at all. I have no hesitation in holding that the provision of Sub-section (3) of Section 4 is manifestly unreasonable & cannot be supported on any just ground. One could understand that the exigencies of circumstances might justify the vesting of plenary powers on certain authorities which could pass orders on their own personal satisfaction temporarily and for a short period of time; but if these orders are to continue indefinitely, it is only fair that an opportunity should be given to the person against whom such order is made to say what he has to say in answer to the allegations made against him. There may not be an investigation by a regular Ct. but it is necessary that the aggrieved person should be given a fair hearing & that by an impartial tribunal.

77. It is clear from the observations reproduced above that absence of a maximum period in the Act by itself was not made the basis of the view that the impugned provision was unreasonable. The learned Judge found it unreasonable as it permitted externment for an indefinite period without at the same time providing for any opportunity to the aggrieved person to answer the allegations made against him.

78. This view is not of any assistance to the petnr. Here, the procedure which is applicable to the proceedings against habitual smugglers requires a preliminary order to be made setting forth the substance of the information received against the person concerned. After the order has been served, the Mag. has to make an inquiry into the truth of the information upon which action had been taken. This enquiry has to be made as nearly as may be practicable according to the procedure prescribed for the trial of warrant cases in the Cr. P.C. except that no

charge need be framed. Evidence of general reputation is made admissible. The person proceeded against has the right of representation. He has also the right of appeal. The observations of Mukherjea, J., therefore, cannot be relied on in support of the contention that the mere absence of a statutory maximum period would make the provision relating to externment unreasonable. The majority view was expressed by the learned Chief Justice. He observed as follows:

The further extension of the externment order beyond three months may be for an indefinite period, but in that connection the fact that the whole Act is to remain in force only up to 14-8-1951 cannot be overlooked. Moreover, this whole argument is based on the assumption that the Provincial Govt. when making the order will not perform its duty and may abuse the provisions of the Section. In my opinion it is improper to start with such an assumption & decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension.

79. The contention of the learned Counsel for the petitioner, is completely, answered by these observations. The whole basis of the argument is that if no maximum duration of externment is laid down in the Act itself, the Cts. who are charged with the duty of fixing the period may act unreasonably. Such an assumption was not considered permissible by their Lordships of the S.C. even when the power was given to the executive & when the Provincial Govt. & the Dist. Mag. could act on their own satisfaction without giving the person concerned even an opportunity to explain the facts & circumstances appearing against him. The assumption would be unfounded when the period of duration is to be determined by a Ct. of law after giving the fullest opportunity to the person proceeded against of representing his case.

80. The learned Counsel for the petitioner has, during the course of discussion, also referred to ' : AIR1950 Bom363 '. In this case also what was found to be fatal to the validity of the restriction authorised by the Legislature was the fact that the person against whom an order of externment was to be made had no right whatever in his defence. It was under these circumstances that the issue of an externment order Under Section 2 (1) (b), Bombay Act VI (6) of 1947 was held void. This case was

heard by a P. B. of the Bombay H. C. consisting of the Chief Justice. Bavdekar & Shah JJ., Shah, J. dissented from the majority view.

81. In ' : AIR1950 Bom374 . consisting of the same learned Judges, disposed of a case in which the validity of Section 46 (3), Bombay District Police Act (Act IV (4) of 1890), was challenged. The petnr. was ordered to remove himself from the State of Bombay & the order was made Under Section 46 (3), Bombay District Police Act. It was challenged on the ground that the law was void inasmuch as it contravened a fundamental right given by the Constitution & the fundamental right reld. on was the right of free movement throughout the territory of India. All the learned Judges were agreed that the provisions contained in Section 46 had not been rendered void by Article 13 of the Constitution on the ground that they contravened the fundamental right under Article 19 (1) (d) & (e). The previous Bombay case reported in ' : AIR1950 Bom363 . was distinguishable on the ground that the Bombay Public Security Measures Act, the validity of which was called in question, contained no provision giving an externee any right of being heard by the authority externing him. The ratio decidendi in ' : AIR1950 Bom363 ' supplied the distinction & the case before us is covered by the latter decision reported in ' : AIR1950 Bom374 ' The order of externment was not for any fixed period. Section 46, Bombay District Police Act, does not fix any maximum duration for which an order of externment may be passed under it. In spite of it, Clause (3) of the section was not found to be unreasonable. The order of externment itself also did not specify any period. In the present case, the law requires the Mag. to start proceedings by an order stating the period for which externment is consd. necessary. The final order fixes the period. The Bombay case goes much further than the case before us.

82. I find no force in the contention both on grounds of reason & on the strength of precedent. The validity of the provisions contained in Sections 16 & 17, Assam Opium Prohibition Act, is not assailable therefore on the ground that no maximum duration for externment has been fixed. Whether the order externing the petnr. from the State of Assam for a period of 3 years is reasonable or not is another matter which will be dealt with separately.

83. The validity of the disputed provisions of the Act has also been questioned on the ground that they enable the Cts. to extern a person from the entire State. It is urged that sxternment from the entire State, in any case, is unreasonable & the provisions of law making it possible for any authority to pass an order of externment would offend against the requirements of Article 19(5) of the Constitution & therefore would be void. In short, the reasonableness of the provision is attacked on territorial grounds.

84. The learned Counsel has made a distinction between externment from one district of the State to another & externment from the Province. He urges that externment from the Province is unreasonable, as if similar legislation is passed by all the States, the result would be externment or expulsion from the entire Dominion. The contention is based on two assumptions: (1) that similar legislation would be passed by other States & (2) that the petnr. will acquire the same reputation as he has acquired in this Province & it will be necessary for all other States in turn to deal with him in the manner that he is being dealt with here.

85. These assumptions are, to say the least, somewhat fantastic. The idea behind them is not at all likely to materialise. But that is not all. Even if the contingency pointed out could take shape in the remote future, it would be wrong on principle to determine the reasonableness of an enactment or of certain provisions in it on the basis of events that may or may not happen in the future. The reasonableness of the impugned legislation has to be determined on the basis of existing conditions. The question is whether in the circumstances that now exist, the impugned provisions are unreasonable. The learned Counsel for the petnr, himself has not been able to say that they work any unusual hardship. His case only is that they can operate unreasonably if certain contingencies pointed out by him occur at sometime in the remote future. That would be no basis for characterising the impugned provisions as unreasonable even on territorial grounds,

86. The Bombay District Police Act embodies provisions similar to those of Sections 16 to 18, Assam Opium Prohibition Act. An order of externment from the State was passed Under Section 46 (3) of that Act. The reasonableness of the provisions was challenged on territorial ground by reference to fundamental rights

guaranteed to citizens under Article 19(1)(d) of the Constitution. The contention did not prevail with the F.B. ' : AIR1950 Bom374 '. The learned Judges observed:

In our opinion we are concerned with the legislation of our State & we are not concerned with the situation that might arise if every State were to pass, a similar legislation, & what so more were to pass a similar order against the petnr.

87. I am in respectful agreement with the view expressed in this case & hold that the contention should not prevail.

88. There yet remains the question whether the restriction imposed by the Appellate order is itself reasonable. The period of externment was reduced to three years by the Appellate Order. We think the period of externment inspite of reduction is still not reasonable & hold that the needs of situation would be amply met if it is reduced to the period that the petnr, his already remained externed (a little over a year) & we order accordingly.

Thadani, C.J.

89. I agree to the order proposed by my learned brother. In the case before us, proceedings were taken against the petnr. under Chap. VI, Assam Opium Prohibition Act, 1947. On the termination of the proceedings, he was ordered to be externed by the learned Mag. from the State of Assam for a period of 5 years --a period which was reduced to 3 years on appeal. The petnrf preferred a revn. appln. against the Judgment & order of the Appellate Ct. We heard the revn. appln. some time before the Long Vacation but, while considering our judgment, it occurred to me that we ought to consider the question whether the order passed by the Cts. below was or was not repugnant to the provisions of Article 19(1)(d) & (e), Const. Ind. We re-heard the revn. appln. after the Vacation after giving notice to the Advocate General.

90. Mr. N.K. Basu for the petnr. raised 3 points, & an additional point was raised by this Ct. after the judgment of Their Lordships of the S.C. in 'Gopalan v. State of Madras' : 1950 CriLJ1383 , was pronounced. The 4 points for our consideration are these: (1) Whether revn. lies in view of Sub-section (3) of Section 17, Assam

Opium Prohibition Act, 1947? (2) Whether the Cts. below were in error in applying the special provision contained in Sub-section (7) of Section 11, Chap. V to proceedings Under Section 16, Chap. VI by reason of the provision contained in Section 17, Assam Opium Prohibition Act, which reads thus:

17. (1) The provisions in Chap. V of this Act shall, in so far as they are applicable, apply to all proceedings Under Section 16, & if upon such inquiry the Mag. is satisfied that it is necessary to extern the person in respect of whom the inquiry is made, he shall make an order accordingly.

(3) Whether the order of externment can be sustained on merits? (4) Whether the order of externment on the facts of this case, is liable to be set aside as being repugnant to the rights of a citizen contained in Article 19 (1) (d) & (e), Const. Ind.

91. I have had the advantage of reading my learned brother's judgment & I am in agreement with his conclusions and reasoning on the 1st & the 3rd points. The 2nd point has given me considerable difficulty, but in view of the order proposed by my learned brother, I will content myself by reproducing the submissions which Mr. Basu has made before us. It was contended by him that the enabling rule of evidence as contained in Sub-section (7) of Section 11, Chap. V, Assam Opium Prohibition Act, 1947, -- a rule which is an exception to the rule against hearsay evidence -- has no application to proceedings Under Section 16 contained in Chap. VI of the Act, & refd. us to the language of Sub-section (7) of Section 11 which is in these terms:

11 (7) For the purposes of this section, the fact that a person is a habitual offender within the meaning of Sub-section (1) may be proved by evidence of general repute or otherwise.

Apparently this provision has been borrowed verbatim from Section 117, Cr. P. C Mr. Basu contended that by the use of the words 'for the purposes of this section' (Section 11) the Legislature deliberately limited the application of Sub-section (7) to proceedings Under Section 11, & that what has been so expressly limited cannot be extended to proceedings Under Section 16 contained in Chap. VI of the Act merely because there is a provision in Chap. VI that the provisions contained

in Chap. V, in so far as they are applicable, apply to proceedings under Chap. VI. He drew our attention to the clear distinction between the subject-matter dealt with in Chap. V & that dealt with in Chap. VI. He pointed out that whereas Chap. V dealt with the subject of a person's liability to execute a bond, Chap. VI dealt with his liability to be externed; that the liability to be externed was infinitely more serious than the liability to execute a bond, & that the Legislature, therefore, deliberately limited the application of Sub-section (7) of Section 11 to proceedings under Chap. V. He argued that if the provisions of Sub-section (7), Section 11, Assam Opium Prohibition Act, 1947, were intended to be applied to proceedings under Chap. VI, it was wholly unnecessary to open Sub-section (7) of Section 11 with the words 'for the purposes of this section' (Section 11); that if these words, namely, 'for the purposes of this section' had been omitted by the Legislature from Sub-section (7) of Section 11 of the Act, it might have been possible to contend, by reason of the words contained in Section 17, Chap, IV, namely 'in so far as they are applicable' that the provision contained in Sub-section (7) of Section 11 as to hearsay evidence was also applicable to proceedings Under Section 16; but so long as the limiting words 'for the purposes of this section' appear in Sub-section (7) of Section 11, there was no justification for extending it to proceedings Under Section 16. Mr. Basu further contended that the words 'in so far as they are applicable' contained in Section 17 of Chap. VI, Opium Prohibition Act, 1947, do not mean that every provision in Chap, V is applicable to proceedings under Chap. VI. For instance, manifestly the provisions of Sub-sections 19) & (10) of Section 11, Cnap. V, cannot apply to proceedings under Chap. VI; that the intention of the Legislature must be gathered primarily from the language it uses in a statute, & that if it was the intention of the Legislature to make available the provisions of Sub-section (7) of Section 11, Prohibition Act, for the purposes of an enquiry Under Section 16 also, nothing could have been easier for the Legislature than to have said 'for the purposes of this section & Section 16' if Sub-section (7) of Section 11 of the Act had been the only provision contained in Chap. V, it might be reasonable to say that unless it is given effect to with reference to proceedings in Chap. VI, it might prove redundant, & that there being a presumption against redundancy or superfluity in a statute, effect must be given to it; but in Chap. V there are 10 sub-sections to Section 11, some of which are clearly applicable &

others not; the meaning of the words 'in so far as they are applicable' is not ambiguous, nor can it be said that the object of the Statute would be frustrated if the provision contained in Sub-section (7) of Section 11 of the Act is not applied to proceedings Under Section 16; the object of the Statute would still be served by requiring a person who is found to be an habitual smuggler of opium to execute a bond; the fact that unless the provision contained in Sub-section (7) of Section 11 is applied to proceedings n/s. 16, it would be impossible for a Ct. to pass an order of externment, is not a ground justifying the application of the provision of Sub-section (7) of Section 11 to proceedings Under Section 16 when in express terms used by the Legislature the provision contained in Sub-section (7) of Section 11 is limited to proceedings Under Section 11 of the Chap V; What is expressly limited in a statute in the matter of its use for a particular purpose cannot be extended by the use of the general words, such as 'in so far as they are applicable' in the matter of its use for another purpose, unless its use for that other purpose is authorised by equally express words; questions such as the intention of the legislature & the object of the statute can legitimately arise only when there is ambiguity in the words 'in so far as they are applicable'; there is no ambiguity in these words.

92. I think that there is considerable force in these submissions. The Legislature, if it thinks fit, may well set at rest the controversy by amending Sub-section (7) of Section 11 so as to include proceedings Under Section 16 of the Act.

93. As to the fourth point, I am content to say that a citizen, who has committed an offence or who is a delinquent in the eye of the law & whose crime or delinquency has rendered him liable to certain penalties or disabilities which can be & have been imposed upon him according to the procedure established by law, cannot claim the protection of rights stated in Article 19 (1) (d) & (e) of the Constitution if, as a result of such penalty or disability, he has been deprived wholly or partially of those rights -- rights which are given to a citizen, & not to a citizen who has committed a crime or is a delinquent in the eye of law. This, I apprehend to be the meaning of the observations made in the judgment of the majority of their Lordships of the S.C. of India in 'Gopalan's case' bearing on the interpretation of Article 19, of the Constitution.

