

Balukishan A. Devidaval Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Jan-19-1974

Reported in : 1975CriLJ1891

Judge : Vaidya and ;Gandhi, JJ.

Appellant : Balukishan A. Devidaval

Respondent : The State of Maharashtra

Judgement :

Vaidya, J.

1. This is an application under Section 561-A of the Code of Criminal Procedure, filed by one Balkishan A, Devidaval against whom Criminal Case No. 102/5/72 is pending in the Court of the Presidency Magistrate, 25th Court. Victoria Terminus, Bombay. The application involves important points under the Railway Protection Force Act 1957 (Act No. 23 of 1957) (hereinafter referred to as the 'R. P. F. Act') and the Railway Property (Unlawful Possession) Act. 1966 (Act No. 29 of 1966) (hereinafter referred to as the 'R. P. U. P. Act').

2. The above case arose out of a complaint filed by the Inspector, Central Intelligence Bureau, Head Quarters before the Presidency Magistrate, at V. T., Bombay.

3. The allegations in the said complaint may be briefly summarised as under:

On November 21, 1970, the Assistant Security Officer, Central Railway, Bhusawal, intimated to the Chief Security Officer Bombay V. T. that two wagons Nos. ERKC-9447 Ex. HSPG BNDM to Akola and Wagon No. ERKC 75531 Ex. were unloaded by Unloading Foreman, one B. D. Raverkar of Akola Goods Shed. 79 M. S. Plates (Mild Steel plates) were unloaded from Wagon No. ERKC 75531. On November 14, 1970 one Ram Singh, who was having two RRs. No. 982859 Invoice No. 3 for 78 M. S. Plates and Invoice No. 2 RR. No. 982857 for 60 M. S. Plates signed the RRs. and endorsed the same to M/s. Vallabhaji Brothers, Clearing Agents at Akola Goods Shed for taking the delivery. One Clerk Onkar of the said firm of M/s. Vallabhaji Brothers was sent to take delivery. He took delivery of 78 M. S. Plates from one B. J. Meshram, after paying the necessary railway dues of Rupees 1.813.80 p. 78 Plates were removed by the said party in lorries. The delivery of the second consignment of 60 M. S. Plates was effected on November 16, 1970 after paying the railway dues of Rs. 2.274.40 P. The said Ram Singh posed as a Proprietor of Modern Industries, which was found to be a fictitious firm, which never existed. The Deputy Commercial Superintendent, Bhusaval. on November 19, 1970 informed all concerned that the delivery from these wagons was obtained on fraudulent Railway Receipts.

4. The enquiry of this case was handed over to the Crime Branch; and the complainant Inspector Kakde was entrusted with the subsequent enquiries. The complainant sets out the steps which the complainant took in this connection as under : That on November 16, 1970, one Jogender Singh, driver rang UP the office of the Digvijaya Transport Company. 88 Khand Basar, Bombay 3 and informed that the trucks had reached Bombay with iron plates and the goods were to be delivered to a Party known as a Eastern Trading Company. Malad, which could not be traced by him. The said driver Jogender Singh was instructed to wait and ring up after some time at about 12.30 noon : one Sikh who disclosed his name as Ram Singh went to the Office of the Transport Company and intimated to one Shankarlal that the said goods belonged to him and the trucks were engaged by him. He said that the goods were to be delivered at Tulsiram Gupta Mills Estate', Darukhana to one Balkishan Agarwal of Devidavals Pvt. Ltd. as the latter

had purchased the goods and had already gone to Malad to bring the lorries at the above Darukhana address.

5. Immediately Inspector Kakde recorded the statement of the other partner of the Company, by name Shankarlal Gangji, The said Shankarlal Gangji stated that the said Ram Singh gave him Rs. 2,000/- to be Paid to his Clearing Agent Shri Vallabhaji at Akola by the Branch Office and intimate Vallabhaji to take the delivery of the remaining material at Akola Goods Shed and transport the same to Bombay and it was accordingly done by Shankarlal.

6. Inspector Kakde thereafter recorded the statements of the lorry drivers, contacted Balkishan and recorded on January 11, 1971 further statements of the Mukadams and others, who were concerned with the unloading of the goods and who assisted accused No. 1 Balkishan Amirchand Devidaval. On statements made by Balkishan, he continued the further enquiry, traced and attached a heap of iron plates in the presence of the Panchas, who had accompanied him in Tulshiram Gupta Mills Estate Compound, made a panchnama thereof and registered a case against accused No. 1, Balkishan, under Section 3 (a) of the R P. U. P. Act.

7. Continuing his enquiries, Inspector Kakde found that the iron plates recovered on January 12, 1971 at the instance of accused No. 1 were not of the specifications of the plates obtained from Akola Goods Shed. On January 31. 1971 while enquiring into another case of Wadi Bunder in which accused No. 1 Balkishan was involved, Balkishan gave a confessional statement and led him and the Panchas to Tulshiram Gupta Mills Estate Compound where 31 M. S. Plates were recovered under a Panchanama. He further discovered that the M. S. Plates were shifted from Devi Daval's compound to Mittal Estate, Kurla, Andheri Road. Marol Naka and they were transported there from Devidaval's Estates. The owner of one of these lorries, one Tukaram Genu stated that on Feb. 7, 1971 that his lorry was engaged on Nov. 21, 1970 by Devidavals for this purpose by accused No. 1. At the instance of the said Tukaram, whose statement Inspector Kakde recorded in the presence of the Panchas. Inspector Kakde and Panchas went to Devidaval Estate and saw, the place where the lorry was loaded.

8. In the meanwhile, investigation of forgery and cheating was being done at Akola by the concerned Police Sub-Inspector. He was directed to suspend his enquiries till further orders were received by him. He handed over all the statements and Panchanamas to Circle Police Inspector Gupta of Nagpur, but he continued his inquiries in November 1971, contacted Manager of the Branch of Digvijay Transport Company at Akola and recorded the statement of Ram Singh, which showed that Ram Singh hired the lorries from Akola Goods shed and transported the goods from Akola Goods Shed to Bombay, and recorded the statement of the Manager of the Branch Office of the Digvijay Transport Company to the effect that Ram Singh hired the trucks of his company, and transported the M. S. Plates from Akola Goods Shed to Bombay. He recorded the statements of several persons in connection with this enquiry and discovered that accused Nos. 1 and 2, Ramsingh alias Ram Singh alias Saigal alias Bedi were in possession of the Railway Property, i. e. M. S. Plates unlawfully obtained by them under forged railway receipt from Akola Goods Shed and that Parasnath Tiwari accused No. 3 joined the other two accused in shifting the property from Devidaval Estates to Mittal Estate, Kurla Andheri Road Marol Naka. knowing that the railway property was obtained unlawfully. It was, therefore, submitted by Inspector Kakde in the complaint that accused Nos. 1, 2 and 3 were guilty of the offences under Section 3 (a) of the R. P. U. P.; and action should be taken against them in respect of those offences. In the complaint, it was mentioned that accused Nos. 2 and 3 were absconding. Annexed to the complaint was (1) a list of prosecution witnesses numbering in all 40 and (2) a list of documents numbering 62.

9. When accused No. 1 appeared before the Presidency Magistrate, he was supplied with the list of documents to be relied upon by the prosecution and also the list of witnesses. The list of documents included the list of the statements of various persons recorded by the Inspector of the Railway Protection Force, the complaint of the Senior Delivery Clerk one B. J. Meshram and several other documents. The Presidency Magistrate commenced the enquiry into the complaint by recording the evidence of a witness, by name Baburao Janoji on March 2, 1973. Three other witnesses were examined on June 12, 1973.

10. In the meanwhile on June 11, 1973, a written application was presented to the Presidency Magistrate, making a grievance of the fact, that although three witnesses, viz.. Sub-Inspector Khan. Mesh-ram and Vallabhji were examined, no copies of documents were furnished to the accused. It was submitted that even before the stage of framing the charge, the accused may be permitted to cross-examine any of these witnesses after the accused had inspected the documents and had copies thereof. No order was Passed on the said application.

11. On June 25, a further application was made by the petitioner for supply of true copies of all the documents in the case to enable the petitioner to prepare his defence and it was prayed that for that purpose a direction should be given to the Court Officer to accompany the accused with the documents to enable him to take photostat copies thereof. It seems that on this application, the Petitioner's Advocate argued before the learned Magistrate. On August 3, 1973 the learned Magistrate rejected the application dated June 12, 1973 by passing the following order:

The prosecution started on the complaint by R. P. F. Inspector and the offence is non-cognizable. Provisions of Section 252, Criminal P. C. and onwards have to be followed. Provisions of Section 251-A, Cr. P. Code are not applicable. In view of this legal position, copies of documents relied on by prosecution cannot be supplied to the accused, as in the case of documents to be furnished, on which prosecution relies under Section 173, Cr. P. Code in a case of a cognizable offence. In these proceedings the accused has no right to copies of documents, applied for. Hence the application is rejected.

12. The learned Magistrate also passed an order on the application made on June 25, 1973 on the same day i. e. on August 3, 1973, as follows:

Copies of documents filed by prosecution on record may be furnished to the accused on payment of necessary charges. The request, for carrying the documents to a photographer to obtain photostate copies, is rejected. as no document can be taken outside the Court's custody. If any request to secure the photostat copies in the Court comes, it will be considered.

13. On August 24, 1973, a charge was framed against the Petitioner under Section 3 (a) of the R. P. U. P. Act to the effect that he on or after November 14, 1970 was found in Possession of M. S. Plates numbering about 110 which were the Railway Property unlawfully possessed by him. The accused pleaded not guilty. Thereafter, the Counsel for the Petitioner made an application in writing, stating as follows : --

In the list of documents supplied to the accused, the prosecution has sought to rely on various statements of witnesses. However, even when many of the witnesses, whose statements were snatched, have been examined, such statements have not been produced. Under such circumstances, it is prayed that the prosecution be directed to give me inspection of all the statements recorded by the prosecution and the prosecution also be directed to supply me the copies of the same. In the alternative, the accused be permitted to take the copies of the said documents.

I say that it is absolutely essential that the statements be furnished to me for the purpose of my defence and for this act of kindness....

14. The matter was argued before the learned Magistrate and the learned Magistrate passed an order on September. 7, 1973, rejecting the application. The said order runs as follows:

Heard the counsel for the accused and P. P. Since cases under R. P. U. P. Act, 1966, are not governed by the provisions of Section 251-A, Cr. P. C. and as accused is not entitled to copies of documents referred to under Section 173. Criminal P. C. copies of statements of witnesses cannot be furnished to the accused.

Prosecution cannot be compelled to file the statements on record to allow their inspection as it would defeat the very purpose, which is mentioned above.

Therefore, the request for grant of copies and inspection of statements of witnesses examined by the prosecution cannot be granted.

Application is rejected.

15. Feeling aggrieved by the said orders passed by the learned Presidency Magistrate on August 3, 1973 and September 7, 1973 and the framing of the charge against the Petitioner, the Petitioner has filed the above application under Section 561-A of the Code of Criminal Procedure, invoking the inherent jurisdiction of the High Court and praying that the said orders should be quashed and set aside and it should be declared that Section 9 of the R. P. U. P. Act is ultra vires the Constitution of India and for quashing the proceedings and the trial before the learned Magistrate. Notice of the Petition was served on the Attorney General as the vires of Section 9 of the R. P. U. P. Act was challenged in the Petition. Mr. Porus Mehta has appeared for the Attorney-General in response to that notice and opposed the Petition. The respondent - State of Maharashtra has also opposed the petition through Mr. Tipnis, the learned Assistant Government Pleader.

16. In support of the petition. Mr. B. A. Desai, the learned Counsel for the petitioner, submitted that having regard to the provisions of Section 8 of the R. P. U. P. Act which empowers the Officers of the Railway Protection Force to exercise the same powers subject to the same provisions as the Officer-in-charge of the Police Station may exercise and subject to the Code of Criminal Procedure, 1898 (Act No. 5 of 1898) when investigating a cognizable case, the complaint filed by Inspector Kakde must be considered in law to be a report under Section 173 of the Criminal Procedure Code; and hence it was incumbent on the complainant to supply the copies to the accused under Section 173 (4) of the said Code.

17. He submitted that in view of the said provisions contained in Section 8 of the R. P. U.P. Act, an Officer of the Railway Protection Force must be considered to be a police officer within the meaning of Section 25 of the Evidence Act and hence it should be held that the confessional statements made to him are inadmissible and all such statements recorded by the officer of the Railway Protection Force, before him. after he started the enquiry were the statements recorded by him under Chapter XIV of the Code of Criminal Procedure and- were hit by the provisions of Section 162 of the Code of Criminal Procedure.

18. He argued that the word used in Section 8 of the R. P. U. P. Act was 'enquiry' : and having regard to the general scheme and the provisions contained in R. P. U.

P. Act and the Act. 1957, it was in substance an investigation under Chapter 14 of the Criminal Procedure Code and it would be jeopardising the liberties of citizens if the statements recorded during the investigation by the officers of the Railway Protection Force were admitted in Court as statements not falling under Section 162 of the Criminal P. C. and Section 25 of the Evidence Act.

19. He therefore submitted that Section 9 of the R. P. U. P. Act which empowered the Officer to summon any person and require the said person to tell the truth upon any subject respecting which he was examined or to make statements and to produce documents and other things as may be required without following the procedure laid down under Chapter 14 of the Code, would render Section 9 ultra vires Article 20 (3) of the Constitution of India and Article 14 of the Constitution of India inasmuch as a person accused of a crime under Section 3 of the R. P. U. P. Act was subjected to an unreasonable discrimination against him, when compared to any other person charged for an offence under the general law of crimes in the country; and if it is held that the word 'person' under Section 9 includes an accused person, it would be in contravention of the constitutional protection against testimonial compulsion under Article 20 (3) of the Constitution.

20. He also relied upon the principles of natural justice and contended that in any event it would be unfair to deny copies of the statements of witnesses examined and to be examined at the trial before the learned Magistrate,

21. Mr. Porus Mehta appearing for the Attorney General submitted that having regard to the several decisions of the Supreme Court, which will be hereinafter discussed and particularly the decision of P. B. Gajendragadkar, C. J., K. N. Wanchoo, M. Hidayatullah, J. C. Shah and S. M. Sikri, JJ. in *Badaku Joti v. State of Mysore* : 1966 CriLJ1353 . none of the contentions raised by Mr. Desai was tenable as it was held in that case, in the context of almost identical provisions under Section 21 of the Central Excises and Salt Act (1944), that even applying the broad view taken by this Court in *Nanoo Sheikh Ahmed v. Emperor* : AIR1927 Bom4 that the words 'Police Officers' must be construed in a broad way and all officers whether they are police officers properly so-called or not would be 'police officers' within the meaning of those words if they have all the powers of a Police

Officer with respect to investigation of offences with which they are concerned, the Central Excise Officers making an enquiry under Section 21 of the Central Excises and Salt Act, 1944 empowered for this purpose 'to exercise the same powers and be subject to the same provisions of the Officers in charge of the police station when investigating a cognizable offence.' were not police officers within the meaning of Section 25 of the Evidence Act.

22. Mr. Porus Mehta submitted that persons against whom enquiries were made, by the R. P. F. Officers were a class by themselves; and hence Section 9 could not be challenged on the ground that it contravened Article (?) of the Constitution.

23. He further submitted that as the enquiry was made by the Officers of the Railway Protection Force, until a complaint was filed by them before the Magistrate. Article 20 (3) of the Constitution was not attracted; and for this purpose, Mr. Mehta relied upon the decision in *Ramesh Chandra v. State of W.B.* : 1970 CriLJ863 .

24. He argued that having regard to the nature of the enquiry held by the officers of the R. P. Force and the nature of the proceedings instituted on a complaint, the accused were not entitled to the copies referred to in Section 173 (4) and referred to several authorities, which will be discussed hereinafter in support of his contention.

25. Mr. Tipnis the learned Assistant Government Pleader on behalf of the State of Maharashtra, resisted the application supporting the arguments of Mr. Porus Mehta. He submitted that the word 'enquiry' in Section 8 of the R. P. U. P. Act cannot be equated with investigation under Chapter XIY of the Code of Criminal Procedure having regard to the provisions of the R. P. F. Act. 1957 which require the Railway Protection Force Officers making arrests to hand over the persons arrested to the Police Officers or in the absence of the Police Officers to take them to the nearest Police Station under Section 14 of the R. P. F. Act 1957 in all cases other than the cases under the R. P. U. P. Act, because the offences under the latter Act are declared to be non-cognizable under Section 5 of the R.P.U.P. Act.

26. He further relied on certain decisions which will also be discussed hereinafter and contended that Section 173 of the Criminal Procedure Code did not apply to the prosecution under the R. P. U. P. Act and hence in the absence of any other provisions in the Criminal Procedure Code, the accused was not entitled to ask for copies of the statements and documents or for inspection of the same. Relying on the decision of the Supreme Court in *Asstt Collector of Customs v. Melyani* : 1970 CriLJ885 , he contended that neither Section 173 (4) nor Section 94 of the Code of Criminal Procedure can be of any assistance to the accused in the asking for the copies or inspection,

27. In view of these contentions, the first important point, which requires to be considered is regarding the meaning of the word 'Police Officer' in Section 25 of the Indian Evidence Act, 1872, which runs as follows:

25. No confession made to a police officer, shall be proved as against a person accused of any offence.

The point is not free from difficulty, in view of the divergent views of the Courts on the question of proper interpretation of the words 'Police Officers' in the said section. We find it convenient to discuss the various cases cited at the bar on this point under three heads. The first is, what may be described as the Bombay view, which is referred to in some of the decisions as the 'broad view.'

28. In *Raphael Pereira v. Emperor* : AIR1926 Bom517 Macleod, O J. and Crump, J, held in the case of a prosecution under the Bombay Salt and Excise Act, an Excise Officer was not a police officer within the meaning of Section 25 of the Indian Evidence Act, and that a statement made by an accused person was not inadmissible in evidence, after considering the effect of Section 20 of that Act. which ran as follows:

Every officer of the department of State and Excise not below the rank of Inspector and every officer of the Customs Department not below the rank of Preventive Officer, who may in right of his office be authorised by 'the Local Government in this behalf, shall, within the area for which he is appointed, exercise powers with regard to offences under this Act. similar to those exercised by an officer in charge

of a police station under the Code of Criminal Procedure. 1898.

Macleod. C. J. held that the same point was considered in *Ah Foong v. Emperor* ILR 46 Cal 411 : AIR 1919 Cal 696 and relied on that judgment, where it was held that it was not possible to regard the Excise Officers as Police Officers.

29. In *Nanoo v. Emperor* : AIR1927 Bom4 . which was a case under the Bombay Abkari Act. before a Full Bench of this Court, composed of Marten, C. J., Lallubhai Shah, Pawcett. Kernp and Mirza, JJ- the decision in *Pareira v. Emperor* : AIR1926 Bom517 was overruled; and it was laid down by the Full Bench that an Abkari Officer, investigating under the Bombay Abkari Act was a Police Officer within the meaning of Section 25 of the Indian Evidence Act, 1872, having regard to Section 41 of the Bombay Abkari Act, which ran as follows:

(1) Every Abkari Officer not below such rank as Government may prescribe shall within the area for which he is appointed have power to investigate all offences punishable under this Act.

(2) Every such Officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence.

30. The other provisions of the Bombay Abkari Act were also taken into consideration. Marten, C. J. observed:

The result is, that there is no authority precisely in point in this case, and we have really to determine a new point. After giving them my best attention to the arguments which have been addressed to us, in my judgment, we should hold that as the Bombay Legislature has deliberately conferred upon these Abkari Officers substantially all the powers of a Police Officer, they have thereby in effect made them Police Officers within the meaning of Section 25, and that, accordingly, any confession made to such an officer in the course of his investigation under the Abkari Act or the Criminal Procedure Code is inadmissible in evidence.

31. Shah, J. in a concurrent judgment said:

Having regard to the reason of the rule laid down in Section 25 of the Indian Evidence Act and having regard to the decisions which have been already referred to, it is clear to my mind that the term 'Police Officer' used in the section is not to be understood in any technical sense, but includes an officer who is vested with the powers of the police by law...

Taking the other sections of the Act under which he has got certain limited powers of arrest and search along with the powers contained in the Criminal Procedure Code, which a Police Officer in charge of a police station is able to exercise, it is clear to my mind that the officer contemplated by Section 41, Sub-section (1), is virtually in the same position as a police officer with regard to the investigation of the offences under the Abkari Act. It seems to me a perfectly fair interpretation of Section 25 to say that the police officer within the meaning of that section is an officer, who exercises the powers of police conferred upon him by law, whether he is called a Police Officer or he is called by any other name and exercises other functions also under other provisions of law. He is a police officer within the meaning of Section 25. If in the investigation of offences under particular Act, he exercises the powers of an officer in charge of a police station for the investigation of a cognizable offence conferred upon him by that Act. Section 25 of the Indian Evidence Act embodies an important rule, which is to be given effect to as a matter of substance and not as a mere matter of form. It is not merely the name given to any officer that should determine whether he is a Police Officer, but the substantial fact whether he exercises the powers of a police officer conferred upon him by law should determine it.

In taking this view of Section 25, it is essential and quite proper to bear in mind the purpose of the section. That purpose has been already stated. It has been discussed in *Queen-Empress v. Babu Lal* I.L.R (1884) All 509. In the words of Oldfield, J. (p. 513) 'The broad ground for not admitting confessions made to a Police Officer is to avoid the danger of admitting false confessions.' That ground would apply as much to an Excise Officer exercising the powers conferred upon him by Section 41 of the Abkari Act as amended as to a Police Officer.

The other three learned Judges concurred in this view.

32. The above Full Bench decision was extended by Mirza and Baker. JJ. in *Emperor v. Dinshaw Cursetti* 31 Bom LR 49 : AIR 1929 Bom 70 by holding that a confession made by an accused person to an excise peon is inadmissible in evidence, under the provisions of Section 25 of the Indian Evidence Act. Mirza, J. stated at p. 51:

In my judgment, the excise peon having the power to detain, search, seize and arrest any person whom he believes to be guilty of any offence, has powers which are very similar to those exercised by a police officer, I would be prepared, therefore to extend the principle of the Full Bench ruling in *Nanoo v. Emperor* : AIR1927 Bom4 to the case of an excise peon, and hold that any confession made to him is inadmissible under the provisions of Section 25 of the Indian Evidence Act.

Baker, J. who concurred with him in that case, where the accused was prosecuted under Section 8 of the Opium Act, observed at p. 51 as follows:

The powers, therefore, exercised by the excise peon are those of search, seizure, arrest and detention. In relation to the Abkari inspector the position of the excise peon is very much that of a Police constable towards an officer in charge of a police station. It would, I think, be very difficult to draw a distinction and to say that because an officer has the powers of an officer in charge of a police station, therefore, a confession made to him would be inadmissible under Section 25 of the Indian Evidence Act while because an officer has only powers of seizure, search, arrest and detention, a confession made to him would not be so inadmissible. It may be that the powers of an ordinary police constable are wider than those of an excise peon, because the duties of a police constable extend to the prevention and detection of offences of all descriptions, whereas the powers of an excise peon are only exercisable in the case of offences falling under the Abkari Act. But when we are dealing with a prosecution under either of those Acts, it is obvious that the position of the excise peon towards the accused is practically the same as that of an ordinary police constable, towards an accused charged with some offence under the criminal law and I see no reason why a confession made to such an excise peon should be held to be admissible on the ground that

he does not exercise all the powers conferred upon an officer in charge of a police station. For all practical purposes, in a case of this character, the position is exactly that of a police constable in a case falling under the ordinary law and in view of the remarks made by this Court in the Full Bench decision in *Nanoo v. Emperor*, I see no reason why the prohibition of Section 25 of the Indian Evidence Act should not be extended to incriminating statements made by persons accused of an offence under the Abkari or Opium Act, to excise persons who are actually engaged at the time of the investigation of the offence under the orders of the Abkari Inspector, and who have the power both to seize any prohibited articles found in the possession of the accused, and also to arrest the accused and keep him in detention.

33. No other reported or unreported Judgment of this Court was cited before us on this Point where a contrary view has been taken by this Court.

34. The second head of the divergent views on the interpretation of the words 'Police Officer' in Section 25 of the Evidence Act may be conveniently described as the Patna view, which is referred to in some of the cases as a 'narrow view' of the strict interpretation of the words.

35. In *Radha Kishun v. King Emperor* : AIR1932 Pat293 decided by the Full Bench of the Patna High Court composed of Courtney Terrell, C. J., Fazl Ali and Agarwal, JJ. they disagreed with the Bombay view. Courtney Terrell, C. J. considered the Bombay view as based on two fallacies, the first being a misunderstanding of the decision of Sir Richard Garth in the case of the *Queen v. Hurribole Chunder Ghose* ILR (1876) 1 Cal 207, which was relied upon by the Bombay Full Bench and the second being an erroneous canon of construction of statutes, i. e. the consideration of what is supposed to be the object of this section of the Evidence Act and the adoption as an initial hypothesis of the theory that that object was to make inadmissible confessions made before persons possessing the power of investigation, search and arrest.

36. Fazl Ali, J. (as he then was) (at p. 58 of ILR Pat) : (at p. 297 of AIR) observed:

What seems to have greatly weighed with the learned Judges of the Bombay High Court was that in the particular case which they had before them the abkari officer had the power to investigate like a police officer in charge of a police station. But is that to be the real test for excluding a confession A Police constable has generally no power to investigate a criminal offence but nevertheless a confession made before him would be inadmissible because he is a police officer. Such would also be the case if a confession is made before a police officer who though invested with the powers of investigation within his own jurisdiction is not engaged in the particular investigation in the course of which the confession is made. Again if a confession, is to be made inadmissible merely because the person before whom it is made is in a position to extort it from the accused why should not Section 25 be extended to those persons who have the power to arrest and detain an accused person for some time and yet have not the power to investigate the offence with which he is charged Thus once it is held that Section 25 refers not only to those who are popularly known as police officers but also to persons who have certain powers ordinarily exercisable by a police officer, it becomes material to consider what is the minimum power or powers to be exercised by such persons so as to make Section 25 applicable to them. I think that the question is capable of being answered in more than one way and this fact by itself would introduce an element of great uncertainty and confusion in administering the law.

As I have already indicated, the question is not altogether free from difficulty, but the view that I have formed on a consideration of the numerous authorities cited before us is that Section 25 was intended to apply to the police officers and police officers alone and that if the framers of the Act did not have in view, at the time of framing the section, any class of persons other than the police officers, we cannot read the term 'Police Officers' as including men who are provisionally and for a limited purpose only invested with some of the powers of police officers.

37. The third learned Judge Agar-wala, J. observed at p. 64 of the reports (ILR Pat) : (at p. 299 of AIR) as under;-

In my opinion no person is a police officer unless he is enrolled in. or appointed a member of the police force or is declared by statute to be a member of that force.

38. It must be noticed here that although this conflict between the Bombay view and the Patna view was brought to the notice of the Supreme Court in *Badaku Joti Savant v. State of Mysore* : 1966 CriLJ1353 the Supreme Court observed in para. 7 of the Judgment, at p. 1748 as under:

It is submitted on behalf of the appellant that the view taken by the Bombay High Court in *Nanoo Sheikh Ahmed* : AIR1927 Bom4 is the correct view and that the view of the Patna High Court in *Radha Kishun* ILR 12 Pat 46 : IR 1932 Pat 293 is not correct. On the other hand, it has been urged on behalf of the State that the view taken by the Patna High Court in *Radha Kishun Marwari* : AIR1932 Pat293 . is the correct one. Prima facie there is in our opinion much to be said for the narrow view taken by the Patna High Court. But as we have come to the conclusion that even On the broad view, a Central Excise Officer under the Act is not a police officer. it is unnecessary to express a final opinion on the two views on the meaning of the words 'police officer' in Section 25 of the Evidence Act. We shall proceed on the assumption that the broad view may be accepted and that requires an examination of the various provisions of the Act to which we turn now.

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39. The third view, if we may say so, is an up-to-date or middle view, as emerging from certain important decisions of the Supreme Court and the High Courts. The view is that the Court should examine closely and thoroughly the powers, disabilities, functions and duties of the officers under the relevant Act empowered to inquire into offences under that Act for determining whether they are 'police officers' within the meaning of Section 25 of the Evidence Act and for the purposes of Chapter XIV of the Criminal Procedure Code, even though they may not be described as police officers.

40. The Supreme Court decisions dealing with this question are as follows:

(1) *State of Punjab v. Barkat Ram* : [1962]3SCR338 (decided by Kapur. K. Subba Rao and Raghubar Dayal, JJ.) under the Land Customs Act, 1924 and Sea Customs Act, 1878 that officers under the Land Customs Act were not 'police officers'.

(2) *Raja Ram v. State of Bihar* : 1964 CriLJ705 (decided by K. Subba Rao, (as he then was) Mudholkar. JJ.. Raghubar Dayal J. dissenting) that Inspector and Sub-Inspector of Excise under the Bihar and Orissa Excise Act, 1915 were 'police officers.'

(3) *Soni Vallabhadas Liladhar v. Asst. Collector of Customs* AIR 1965 SC 481 (decided by Gaiendrakadkar. A. K. Sar-kar, K. N. Wanchoo, K. C. Das Gupta and N. Raigopala Ayyangar. JJ.) that the customs officers under the Sea Customs Act, 1878 were not 'police officers'.

(4) *Badaku Joti Savant v. State of Mysore* : 1966 CriLJ1353 . which, in our opinion is the most pertinent for the purposes of deciding the present case (decided by Gajendragadkar, C. J. K. N. Wanchoo, Hidayatullah (as he then was) J. C. Shah (as he then was) and Sikri (as he then was) that officers under the Central Excises and Salt Act, 1944 were not 'police officers.'"

(5) *Ramesh Chandra v. State of West Bengal* : 1970 CriLJ863 which is also very relevant for deciding the question before us (decided by J. C. Shah. Ramaswami, Mitter, Hegde and Grover, JJ.), that Officers of Customs under the Sea Customs Act, 1878. were not 'Police Officers' and that the position is not different under the Customs Act, 1962.

(6) *P. Rustomji v. State of Maharashtra* : 1971 CriLJ933 (Vaidialingam and A. N. Ray, JJ.) that Customs Officers under the Customs Act, 1962 were not 'Police Officers.'

(7) *Harbansingh v. State of Maharashtra* : 1972 CriLJ759 (decided by J. M. Shelat, Jaganmohan Reddy and Khanna, JJ.) that officers of Customs under the Customs Act were not police officers.

(8) *Hazarisingh v. Union of India* : 1974 CriLJ391 (decided by Jaganmohan Reddy and Khanna. JJ.) that Customs Officers enquiring into the offences under the Foreign Exchange Regulation Act, 1947 were not 'Police Officers.

41. The following are the decisions of the High Courts where the third view appears to have prevailed.

(1) Collector of Customs v. Kotumal : AIR1967 Mad263 (decided by the Full Bench of the Madras High Court) that Customs Officers under the Customs Act were not 'police officers.'

(2) Supdt. and Remembrancer of Legal Affairs W. B. v. D. Suryarao : AIR1969 Cal594 (decided by Talukdar, J.) that an officer of the Railway Protection Force holding an enquiry under the R. P. U. P. Act was not a 'police officer'.

(3) State of Gujarat v. Abdul Rehman , decided by Sheth. J. of Gujarat High Court, relying on the aforesaid Calcutta decision that a Sub-Inspector of Railway Protection Force was not a 'police officer' when he is enquiring into the offence under the R. P. U. P. Act

(4) Laxman Padma Bhagat v. The State : AIR1965 Bom195 decided by Tambe and Palekar, JJ. (as they then were) that officer of the Central Excise Department enquiring into a case falling under the Sea Customs Act, 1878 was not a 'police officer.'

(5) Pukhraj Pannalal v. K. K. Ganguly : AIR1968 Bom433 decided by Patel and Chitale. JJ. that the customs officers under the Customs Act 1962 cannot be regarded, as 'police officers.'

(6) An unreported judgment D/- 15-1-1970 in Criminal Revn. Appln. No. 1135 of 1969 (Bom) of this Court decided by Deshpande, J. that the officers of the R. P. Force enquiring into offences under the R. P. U. P. Act are not 'Police Officers.'

(8) Hari Rachu Kanadi v. State of Maharashtra : (1971)73BOMLR891 (decided by Vimadalal, J.) that the officers of the R. P. Force enquiring into the offences under the R. P. U. P. Act were not the Police Officers.

(9) An unreported Judgment D/- 10-7-1973 by Rege, J. in Cri. Revn. Appln. No. 156 of 1973 (Bom) that officers of the R P. Force enquiring into the offences under the R. P. U. P. Act are not the Police Officers.

42. The position which emerges out of the above broad survey of the relevant authorities cited before me is that despite the first view, binding on us as the view

of the Full Bench of this Court, we must follow the course indicated in the third view of scrutinising the provisions of the R. P. F. Act and the R. P. U. P. Act, to determine the question as to whether the R. P. F. Officers inquiring into the offences under the R. P. U. P. Act are in reality the Police Officers, subject to all the provisions of Chap. XIY of the Code of Criminal Procedure and falling within the meaning of Section 25 of the Evidence Act. The question is not res integra. It has been already decided in several unreported cases of this Court including the cases decided by Deshpande, J. and Rege, J. sitting singly, above referred and one aforesaid Judgment of this Court decided by Vimadalal, J. It has also been decided by single Judges of the Calcutta High Court and the Gujarat High Court.

43. However, Mr. Desai, the learned Counsel for the petitioner, submitted that in arriving at those conclusions, the decisions of the Supreme Court and particularly the decision in : 1964 CriLJ705 Raja Ram v. State of Bihar, all the relevant provisions of the R. P. F. Act and the R. P. U. P. Act and the Code of Criminal Procedure were not considered and were not brought to the notice of the single Judges who decided the matters. Normally, as we are concerned with the Acts passed by Parliament, as uniformity of interpretation all over India is desirable, we should hesitate to differ from the view taken by the Calcutta High Court and the Gujarat High Court and Single Judges of our own Court, even assuming that there was a possibility of taking a different view of the matter But, as the provisions of the R. P. F. Act and the R. P. U. P. Act came up for consideration of the Division Bench of this Court, for the first time in this case, We think it necessary to deal with the provisions of the two Acts in the light of the elaborate contentions made by Mr. Desai before us.

44. The Railway Protection Force Act, 1957 was enacted by the Parliament to provide for the constitution and regulation of a Force called the Railway Protection Force for the better protection and security of railway property. The history of this Act is set out in the Manual of Railway Protection Force, 1966, published by the Government of India. Ministry of Railways (Railway Board) as follows:

The Railway Watch and Ward has its origin as long as 1882 when the Railway Companies then in existence appointed their own Chowkidars for each

Department. This arrangement was found to be on the whole fairly satisfactory till 1918 when with an increase in traffic there was a steep rise in the incidence of thefts of goods entrusted to Railways for carriage which led to the Government of India to appoint a Committee to enquire into causes thereof and surest a remedy.

2. Acting on the Committee's recommendations, most of the Class I Railways reorganised their Watch and Ward as a separate unit under a superior officer. But this too proved inadequate, and in the situation coming in the wake of the Second World War, losses due to thefts and claims that had to be paid by Railways assumed such size as to need serious attention. This situation was not peculiar to Railway premises only but was a part of the general crime situation in the country. The Watch and Ward units were found to be hopelessly inadequate for the purpose for which they were intended.

3. The Government of India, therefore, instituted a special enquiry through Director. Intelligence Bureau (Ministry of Home Affairs) who in his report in 1954 forcefully brought out the necessity of organising the Watch and Ward on a statutory basis. The Railway Board also appointed a Security Adviser to the Railway Board in July. 1953 to work out the details for the reorganisation of the Watch and Ward Department It was decided in consultation with the Ministry of Home Affairs that there should be an integrated well organised force on the model of the Police with adequate supervisory staff specially trained to meet the particular aspects of crime that were relevant to railway property to work in close collaboration and act as a second line to the State Police with whom under the Constitution, policing on Railways rested. This led to the R. P. F Bill for the better protection and security of Railway Property being passed into the Railway Protection Force Act. 1957 (No. 23 of 1957).

45. The Act defines 'Railway Property' as including any goods, money or valuable security, or animal, belong to, or in the charge or possession of a railway administration. Section 3 of the Act provides for the constitution of the Force for the better protection and security of railway property. Section 4 provides for the appointment and powers of superior officers, to be regulated by the Central Government. Section 5 lays down the classes and ranks among members of the

Force as Inspector. Sub-Inspector and Assistant Sub-Inspector, Head Rakshak, Senior Rakshak and Rakshak. Section 6 lays down the appointment of members of the Force and it further lays down that the Chief Security Officer appointed by the Government shall exercise the powers of appointment of members of the Force in accordance with the rules made under the Act by the Central Government. Section 7 lays down that a certificate should be issued to the member of the force. Section 8 provides for superintendence and administration of the Force. Section 9 regulates dismissal, removal etc. of members of the Force etc. Section 10 declares that Inspector General and every other superior officer and every member of the Force shall for all purposes be regarded as Railway servants within the meaning of the Indian Railways Act, 1890, other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act. Section 11 requires every superior officer and member of the Force-

- (a) promptly to execute all orders lawfully issued to him. by his superior authority;
- (b) to protect and safeguard railway property;
- (c) to remove any obstruction in the movement of railway property : and
- (d) to do any other act conducive to the better protection and security of rail-way property.

46. What follows in the Act is of great importance to us in this case. Section 12 of the Act empowers every superior officer or member of the force to arrest without an order from a Magistrate and without a warrant (a) any person who has been concerned in an offence relating to railway property punishable with imprisonment for a term exceeding six months, or against whom a reasonable suspicion exists of his having been so concerned; or (b) any person found taking precautions to conceal his presence within railway limits under circumstances which afford reason to believe that he is taking such precautions, with a view to committing theft of, or damage to, railway property. Section 13 empowers any superior officer of the Force, not below the rank of a Senior Rakshak, to search without a warrant in certain circumstances and the provisions of Code of Criminal Procedure, 1898,

relating to searches under that Code, shall, so far as may be, apply to searches under this section. Section 14 lays down : 'Any superior officer or member of the Force making an arrest under this Act, shall, without unnecessary delay make over the person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken to the nearest police station. Section 15 lays down that officers and members of the Force should be considered always on duty, and shall, at any time, be liable to be employed in any part of the railways throughout India. Sections 16 and 17 deal with the suspension of the Members of the Force and their delinquencies, with which we are not concerned. Section 18 lays down that the Police (Incitement to Disaffection) Act, 1922 shall apply to members of the Force as it applies to members of a Police force. The other three sections of the Act are not relevant to the question before us.

47. Relying on the provisions of Sections 12, 13, 14 and 18 of the Act, it was contended that the members of the Railway Protection Force must be considered to be 'Police Officers' particularly having regard to the provisions of Section 18, which makes the Police (Incitement to Disaffection) Act, 1922 applicable to members of the Force. In our opinion, however, the very fact that under Section 14 of the Act, a member of the Railway Protection Force has to make over the person arrested to a police officer or a police station shows that despite some powers of arrest and search given to the R P F, and despite extending the provisions of the Police (Incitement to Disaffection) Act, 1922 to the Members of the force, the Parliament thought that the Members of the R. P. Force should not be considered as Police Officers for any purpose. On the contrary, the Parliament wanted them to be regarded as 'Railway Servants' whose duty was to protect the railway property as defined in the Act. Such railway servants, in our opinion, can never be treated as police officers in any sense of the expression 'Police Officers'. Hence there is nothing in the R. P F Act, 1957 which supports the contention of the petitioner that the R. P. Force Officers are police officers.

48. Turning next to the provisions of the R. P. U. P. Act, we find that it was an Act to consolidate and amend the law relating to unlawful possession of railway property. It repealed the Railway Stores (Unlawful Possession) Act, 1955, which in its turn had repealed the Railway Stores (Unlawful Possession) Ordinance, 1944

made by Lord Wavell. the Governor General of India, in exercise of the Powers conferred by Section 92 of the Government of India Act, 1935. The Ordinance had only three sections. It defined 'railway stores' including any article used or intended to be used in the construction, operation or maintenance of a railway and made it unlawful to be in possession of the railway stores. It created an offence without creating a special machinery for inquiring into the offences, It was repealed by the Railway Stores (Unlawful Possession) Act, 1955 enacted by the Parliament for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores as was then in force, to the whole of India and to re-enact the provisions of the Ordinance. Even this Act had not created any special machinery for inquiring into the offence of unlawful possession of railway stores. That is how. a consolidating Act was passed by the Parliament in 1966 to consolidate and amend the law relating to unlawful possession of railway property,

49. Section 2 (a) of the said Act, defines 'force' as meaning the Railway Protection Force constituted under Section 3 of the Railway Protection Force Act, 1957. Section 2 (d) defines 'railway property' including any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration. Sections 3 to 11 are the most important provisions which were discussed before us and therefore, they are reproduced herein below:

3. Whoever is found, or is proved to have been in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;'

(b) for the second or a subsequent offence with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than

two thousand rupees.

4. Any owner or occupier of land or building. or any agent of such owner or occupier in charge of the management of that land Or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) an offence under this Act shall not be cognizable.

6. Any superior officer or member of the Force may without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned.

7. Every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force.

8 (1). When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7. he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898) when investigating a cognizable case:

Provided that-

(a) If the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, pr forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the

accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

9 (1) An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the persons summoned.

(3) All persons. So summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons So summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required ; Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908, (5 of 1908) shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid, shall be deemed to be a 'judicial proceeding' within the meaning of Section 193 and Section 223 of the Indian Penal Code (45 of 1860).

10. (1) If an officer of the Force has reason to believe that any place is used for the deposit or sale of railway property which had been stolen or unlawfully obtained, he shall make an application to the Magistrate, having jurisdiction over the area in which that place is situate, for issue of a search warrant.

(2) The Magistrate to whom an application is made under Sub-section (1), may, after such inquiry as he thinks necessary, by his warrant authorise any officer of the Force-

(a) to enter, with such assistance as may be required, such place;

(b) to search the same in the manner specified in the warrant.

(c) to take possession of any railway property therein found which he reasonably suspects to be stolen or unlawfully obtained; and

(d) to convey such railway property before a Magistrate or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety.

11. All searches and arrests made under this Act shall be carried, out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating respectively to searches and arrests made under that Code.

50. The only other relevant section is Section 14. which made the provisions of the R. P. U. P. Act to have effect 'notwithstanding anything inconsistent therewith contained in any other law for the time being in force.'

51. What is contended by Mr. Desai, the learned Counsel for the petitioner is that having regard to : (1) the essentially penal nature of the R. P. U. P. Act, which provides for punishment and the machinery of investigation into the offence of unlawful possession and (2) the provisions dispensing with the mandatory duty cast on the R. P. Force Officers under Section 14 of the R. P. F. Act and Providing for arrest, detention and production of the accused persons before the Court by the officers of the R. P. Force themselves; (3) the express provisions of Section 8 (2) of the R. P. U. P. Act which made the entire Chapter XIY of the Code of Criminal Procedure applicable to the officers of the R. P. F. inquiring into the offences under the R. P. U. P. Act : (4) the powers vested in the Railway Protection Force to record statements, to summon persons and take their statements and the duty of the persons so summoned to tell the truth before them as provided under section; (5) the powers of searches, required to be carried on in the manner prescribed by the Code of Criminal Procedure and (6) the provisions of Section 14 which made the R. P. U. P, Act prevail over every other law, which was inconsistent with it, it must be held that the officers of the Railway Protection

Force, inquiring into offences under the Act, must be deemed to be 'police officers' for the purposes of the Criminal Procedure and the Evidence Act.

52. Mr. Desai contended that the Parliament could never have intended to camouflage investigation into offences by the mere use of the word 'inquiry' in Section 8 (1) and thereby deprive the citizens of the protection given to them by law under Section 25 of the Evidence Act and Chapter XIY of the Criminal Procedure Code and the other provisions of law based on the postulate that officers investigating into offences are prone to a temptation to practise torture for the purpose of extorting confessions from persons in their custody in the hope of professional advancement or for some other reasons. Mr. Desai submitted that it is well known that the object of Sections 25, 26 and 27 in the Evidence Act is to prevent confessions from being obtained from accused persons through any undue influence being received as evidence against them.

53. It is true that in enacting these provisions, as pointed out by Mahmood, J., in *Queen Empress v. Babu Lal* ILR(1884) All 509 , the Legislature had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and those malpractices went to the length of positive torture. But it cannot be forgotten that the Law Commission has recommended that in view of the changed set-up since independence it was claimed by the police officers all over India that the police should be shown a greater measure of confidence and statements or confessions made to the police should be made admissible in evidence by modifying Sections 25 and 26 of the Evidence Act, though it was unable to accept the claim of the police officers that the statements or confessions made to the police should be made admissible in evidence. See *Sarkar on Evidence*, 1971 - 12th Edition, page 270.

54. These considerations may be relevant in deciding whether the relevant confessions and statements alleged to have been made before the Railway Protection Force Officers are voluntary and true. We have no doubt that any Court called upon to consider the value of such statements and confessions will do so with prudence and utmost caution : but that cannot weigh with us in determining whether such statements and confessions are hit by Section 25 of the Evidence

Act. That question can be decided only after considering the intention of the legislature in clothing the officers of the Railway Protection Force with powers which are usually and normally exercised by a police officer under the Criminal Procedure Code and the relevant police Acts.

55. Mr. Desai submitted that the matter is concluded by the tests laid down by the Supreme Court in the above cases and particularly in *Raja Ram Jaiswal v. State of Bihar* : 1964 CriLJ705 where it is stated at page 833:

The test for determining whether such a person is a Police officer' for the purpose of Section 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of police station establish a direct or substantial relationship with the prohibition enacted by Section 25, that is. the recording of a confession. In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or a delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed of the question as to what other powers he enjoins. These questions may, perhaps, be relevant for consideration where the powers of a police officer conferred upon him are of a very limited character and are not by themselves sufficient to facilitate the obtaining by him of a confession.

56. Mr. Desai argued that this decision must be considered as binding on this Court as the view expressed in *Raja Ram's case* : 1964 CriLJ705 has never been overruled by the subsequent decisions of the Supreme Court. Relying on the provisions of Sections 8 and 9 of the R. P. U. P. Act, he submitted that these sections empower the officers of the Railway Protection Force to extract confessions and attracted the ratio in *Raja Ram's case*.

57. The argument sounds plausible but ignores the fundamental rule relating to precedents that the precedent is an authority for what it decides and not for every proposition of law which flows as a corollary from what it decides. The test was laid down in *Raja Ram's case* : 1964 CriLJ705 by the majority of the Judges in the context of Sections 77 and 78 of the Bihar and Orissa Excise Act. which are quoted at page 839 in the dissenting Judgment of Raghubar Dayal, J., although

there is a slight mistake in the printing of the section at that page as can be seen from the corresponding page 785 of here the most relevant Section 78 (3) is quoted as follows:

(3) For the purposes of Section 156 of the Code of Criminal Procedure, 1898 (5 of 1898) the area to which an Excise Officer empowered under Section 77, Sub-section (2) is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer in charge of such station.

Raja Ram's case was not noticed in the subsequent decision in *Soni Vallabhadas v. Assistant Commr. of Customs* AIR 1965 SC 481.

58. The effect of that decision was explained in *Badku Joti Savant v. State of Mysore* : 1966 CriLJ1353 by Wanchoo, J. speaking for the Court where it was argued relying on Raja Ram's case : 1964 CriLJ705 that an officer inquiring into an offence under Section 21 of the Central Excises and Salt Act, 1944, (which was substantially worded like Section 8 (2) of the R. P. U. P. Act), was a 'police officer'. Wanchoo, J. rejected the contention observing at P. 1749 as follows:

Thus, though under Sub-section (2) of Section 21 the Central Excise Officer under the Act has the powers of an officer-in-charge of a police station, when investigating a cognizable case, that is for the purpose of his inquiry under Sub-section (D) of Section 21. Section 21 is in terms different from Section 78 (3) of the Bihar and Orissa Excise Act, 1915, which came to be considered in Raja Ram Jaiswal's case : 1964 CriLJ705 and which provided in terms that 'for the purposes of Section 156 of the Cr. P. C., 1898. the area to which an excise officer empowered under Section 77. Sub-section (2) is appointed shall be deemed to be a police station and such officer shall be deemed to be the office-in-charge of such station.' ... All that Section 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the powers to submit a charge sheet under Section 173 of the Criminal P. C.. for unlike the Bihar and Orissa Excise Act, the Central Excise Officer is not deemed to be an officer-in-charge of a police station. It has been urged before us that if we consider Section 21 in the setting of Section 14 of the

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

59. With respect, these observations clinch the issue before us as the provisions of the Central Excises and Salt Act referred to in the judgment are substantially identical with the provisions of the R. P, U. P. Act.

60. Wanchoo, J. has further observed at p. 1750 in para. 11:

The scheme of the Act, therefore, being different from the Bihar and Orissa Excise Act, 1915, the appellant cannot take advantage of the decision of this Court in Raja Ram Jaiswal's case : 1964 CriLJ705 taking even the broader view of the words 'police officer' in Section 25 of the Evidence Act.

61. That would have settled the matter so far as this case is concerned; but Mr. Desai has tried to emphasise the tests in the subsequent decisions of the Supreme Court, in order to distinguish the provisions of the R. P. U. P. Act from the provisions of the Central Excises and Salt Act discussed in the decision in Badku Joti Savant's case : 1966 CriLJ1353 . He argued that the real test is whether the provisions of the Act are intended for punishing offenders or for some other purpose such as revenue purpose, which was the dominant purpose of the Central Excises and Salt Act and the various Customs Acts. This submission must be rejected in view of the ratio in Badku Joti Savant's case, quoted above, which dealt with a statute whose words were identical with the words of the R. P. U. P. Act. He relied on the decision in Ramesh Chandra Mehta v. State of West Bengal : 1970 CriLJ863 . where J. C. Shah, J. speaking for the unanimous Court observed at p. 943:

But a Customs Officer is not a member of the Police force. He is not entrusted with the duty to maintain law and order. He is entrusted with power which specifically relates to the collection of customs duties and prevention of smuggling. There is no warrant for the contention raised by Counsel for Mehta that a Customs Officer is invested in the enquiry under the Sea Customs Act with all the powers which a Police Officer in charge of a police station has under the Code of Criminal Procedure. Under the Sea Customs Act, a Customs Officer is authorised to collect Customs duty to prevent smuggling and for that purpose he is invested with the power to search any person on reasonable suspicion (Sec. 169) : to screen or X-ray the body of a person for detecting secreted goods (Sec. 170-A); to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act (Section 173); to obtain a search warrant from a Magistrate to search any place within the local limits of the jurisdiction of such Magistrate (Section 172); to collect information by summoning persons to give evidence and produce documents (Section 171-A) : and to adjudge confiscation under Section 182. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve a summons to produce a document or other thing or give evidence, and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, and the person so summoned is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Sea Customs Act. For purpose of Sections 193 and 228 of the Indian Penal Code the enquiry made by a Customs Officer is a judicial proceeding. An order made by him is appealable, to the Chief Customs-authority under Section 188 and against that order revisional jurisdiction may be exercised by the Chief Customs-authority and also by the Central Government at the instance of any person aggrieved by any decision or order passed under the Act. The Customs Officer does not exercise, when enquiring into a suspected infringement of the Sea Customs Act powers of investigation which a Police Officer may in investigating the commission

of an offence. He is invested with the power to enquire into infringements of the Act primarily for the Purpose of adjudicating forfeiture and penalty. He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report under Section 173 of the Code of Criminal Procedure. He can only make a complaint in writing before a competent Magistrate.

62. Relying on these observations, Mr. Desai submitted that it is because of the various provisions contained in the Customs Act, relating to adjudication, prevention of smuggling and collection of revenue that the officers vested with the powers under that Act were considered not to be 'police officers.' The argument must be rejected because the observation of J. C. Shah, J. (as he then was) cannot be read in part only. The observations must be read as part of the judgment as a whole. Reading thus, with respect, the whole of the paragraph and the rest of the judgment, we are unable to accept the argument of Mr. Desai that the ratio in that case depended only on objects mentioned in the Customs Act other than the object of punishing offenders. J. C. Shah, J. has also said that the powers conferred on the Customs Officers were for enforcing the provisions of the Customs Act.

63. In the present case also, the Parliament thought it fit to enact the R. P. U. P. Act as a more effective measure for preserving and protecting railway property than the provisions contained in the R. P. F. Act. The mere fact that the R. P. U. P. Act provided for an offence or the fact that R. P. F. members can arrest, detain and produce the accused persons So arrested before the Magistrate or issue summons to a witness will not convert the R. P. F. Officers, who are declared to be 'railway servants' under the R. P. F. Act and who are essentially concerned with the protection of the railway property, into 'police officers' for the purposes of the Evidence Act and the Criminal Procedure Code. It is necessary, to notice here that Raja Ram Jaiswal's case : 1964 CriLJ705 was also referred to by J. C. Shah, J. in para. 7 of the said judgment.

64. Mr. Desai then referred to another decision of the Supreme Court in Illias v. Collector of Customs, Madras : 1970 CriLJ998 and urged that since that case has approved of the decision in the State of Punjab v. Barkat Ram : [1962]3SCR338 ,

notwithstanding the disapproval of the test of the power to file a charge-sheet, as laid down in *Badaku Joti Savant's case* : 1966 CriLJ1353 all the decisions of the Supreme Court must be held to rest on the common feature of the various Acts considered by the Supreme Court, to collect revenue, with which the Customs Officers and Excise Officers are primarily concerned. We do not think that it is possible to extract such a proposition from the decision of the Supreme Court.

65. It is true that one of the reasons set out in the *State of Punjab v. Barkat Ram* : [1962]3SCR338 is that a Customs Officer is not primarily concerned with the detention but mainly interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties. But the judgment, with respect, is not entirely based on that aspect of the matter. The Court has considered the various decisions and principles in the context of the provisions of the Sea Customs Act. 1878 and *Raghubar Dayal*. J. for the majority, observed at p. 280:

We are therefore of opinion that the duties of the Customs Officers are very much different from those of the Police Officers and that their possessing certain powers, which may have similarity with those of police officers, for the purpose of detecting the smuggling of goods and the persons responsible for it would not make them police officers.

66. We are unable to find any of the decisions of the Supreme Court laying down the proposition that officers exercising some of the powers of the police such as arrest, detention and search were not 'police officers' merely because they were exercising the powers only for the purposes of revenue of the State as contended by Mr. Desai. On the contrary, as already stated above, J. C. Shah, J. has observed that their purpose is to enforce the provisions of the Act, which includes some of the offences also. We, therefore, reject the contention of Mr. Desai that merely because the provisions of Section 8 of the R. P. U. P. Act enable the officer of the R. P. F. to exercise powers similar to the powers of the officer in charge of the police station when investigating a cognizable offence, it can be said that the R. P. F. Officers, who were declared by the Parliament to be 'railway servants,' are 'police officers' in any sense of the term. Similarly, we reject the contentions that

because the R. P. U. P. Act deals only with offences and it has nothing to do with revenue and that although the word 'enquiry' is used in Section 8 (1) of the R. P. U. P. Act, it is nothing but an investigation of the offences, and, therefore, the officers holding the 'enquiry' are 'police officers.' We are of the view that all cases including the cases of this Court, reported and unreported, in which it has been held that the officers enquiring into the offences under the R. P. U. P. Act are not police officers have, with respect, taken the correct view of law.

67. Mr. Desai, however, relied upon the decision of the Allahabad High Court in *Durga Prasad v. State of U. P.* , and contended that in that case the learned single Judge of the Allahabad High Court applied the provisions of Section 162 of the Criminal Procedure Code to the statements recorded by an officer of the Railway Protection Force because he held that while conducting the enquiry under the R. P. U. P. Act, an officer had to be guided by the provisions of the Code of Criminal Procedure and that the enquiry amounted to investigation. With great respect, we do not find any reference to the above Supreme Court decisions in the said case dealing with the question as to whether such an officer is a 'police officer'. It appears to have been assumed in that case that an officer conducting an enquiry was a Police Officer. The assumption, with respect, is against the weight of authorities referred to above. Hence Mr. Desai cannot rely on the said Allahabad decision.

68. In this connection it is also necessary to bear in mind the constitutional background of the enactment by Parliament of the Railway protection Force Act and the R. P. U. P. Act. They are both Acts enacted by the Parliament in exercise of the powers conferred on it under entry No. 2 : 'Naval, military and air forces; and other armed forces of the Union;' entry No. 22 : 'Railways' of the Union List I of the 7th Schedule and entry No. 1 : 'Criminal Law.' entry No. 2 : 'Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of the Constitution,' in the Concurrent List III of Schedule VII. The constitution of the Police force is normally the exclusive power of the State Government under entry No. 2 : 'Police, including railway and village police, of the State List II of the VII Schedule to the Constitution.'

69. To attribute to Parliament an intention to create a police force or Police officers, who are normally to be constituted in exercise of the State powers would be, therefore, inconsistent with the Constitution. It is only under entry No. 80 of List I (Union List) of Schedule VII that the Parliament would provide for extension of powers and jurisdiction of the members of the police force belonging to the State to any area outside that State 'but not so as to enable the Police to exercise the powers or jurisdiction to any area outside the jurisdiction without the consent of the Government of the State in which such area is situated ' Neither the R. P. F. Act nor the R. P. U. P. Act fall within the ambit of entry No. 80,

70. In fact, so far as the Maharashtra State is concerned, the Police Officers are appointed under the Bombay Police Act, 1951. That Act itself provides in Section 22-A for the appointment of the Railway Police. Having regard to the constitutional scheme of the State Governments and the Union Government in relation to the police organisation it is not possible to attribute to the Parliament an intention to create a Police force though it is not empowered to do so under the Constitution except in the manner provided by the aforesaid Entry No. 80. The pith and substance of the R, P. U. P. Act is to create an adequate machinery for preserving and protecting the railway property. The Railway Protection Force was primarily intended to watch and pre-vent the pilfering of railway property all over India- The Officers of the Railway Protection Force have no general duty to maintain law and order even in areas or places where Railway property is situated. Their duties are connected only with the preservation or protection of the Railway property. It is, therefore, impossible to hold that when enacting the R. P. U. P. Act, the Parliament intended to treat the Members of the Railway Protection Force, who were declared to be only 'railway servants' as stated above, to become in law 'Police Officers.'

71. Having regard to the enormous and increasing work in Police Stations in big cities, where usually railway goods are pilfered, the Parliament must have thought it necessary to eliminate the necessity for the Railway Protection Force Officers to go to the police stations at every stage of their enquiry. Having decided to constitute a well organised Railway Protection Force under an Inspector General, the Parliament in its wisdom thought it necessary to clothe those officers with

almost all pre-trial powers vis-a-vis the offences in respect of the railway property. The object of the Parliament was not to create a new police force but to relieve the Railway Protection Force from the inconvenience and waste of time arising from the legal necessity of approaching the police stations at every stage of enquiry into the offences. It will be, therefore, inconsistent with the object of the Act to hold that the Railway Protection Force Officers were Police Officers. To hold that the officers of the Force are 'police officers' would also be inconsistent with the Constitutional powers of the Parliament.

72. The next question is as to whether the confessions made to the R. P. F. Officers are hit by Section 25 of the Evidence Act. Inasmuch as the said officers are not 'police officers' it has to be answered in the negative. Section 25 renders confessions made to police officers inadmissible. As we have come to the conclusion that the Officers of the R. P. F. are not police Officers, Section 25 does not render the confessions inadmissible. The apprehension of Mr. Desai is that this would result in despotism inasmuch as the R. P. U. P. Act has departed from the normal presumption of innocence of the accused in respect of the offences charged and has placed the burden of proof on the accused to satisfy the Court that the railway property came into his possession lawfully. Mr. Desai cannot complain regarding the burden of proof on the accused because such a burden is often placed in many laws, creating offences. The burden on the accused in such cases is interpreted by the Courts to be not as heavy as the burden on the prosecution. The burden on him is more or less like the burden of proof imposed on a party in civil case, who would fail if he did not prove certain facts. The Courts have adopted the test of preponderance of probability with regard to the burden on the accused and of proof beyond reasonable doubt with regard to the burden on the prosecution. Mr. Desai cannot make a grievance of the R. P. U. P. Act merely because such burden is placed on the accused.

73. His grievance regarding the possibility of despotism is not justified because the Railway Protection Force is subject to Government control; and since independence, Parliament and public opinion are capable of controlling any Department of the State. As long as democracy is functioning in our country a grievance of potential despotism cannot be made with regard to the Railway

Protection Force. Moreover, confessions recorded by the R. P. F. Officers have to be produced before the Court before they can be relied upon by the prosecution. It is open to the accused to retract them and to satisfy the Court that the confessions were neither voluntary nor true. Courts are bound to view such confessions with the usual prudence and caution. Therefore, merely because there are likely to be malpractices of extorting confessions, it cannot be said that law has to be interpreted as prohibiting the admission of such confessions at the trial of an offence under the R. P. U. P. Act.

74. Mr. Desai submitted that, in any event. Section 9 of the R. P. U. P. Act was ultra vires Article 14 and Article 20 (3) of the Constitution of India. There is no merit in either of these contentions. Article 14 does not prohibit reasonable classification based on rational nexus with the object to be achieved by enacting a law. Article 14 protects equality before law. It lays down that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. There is nothing in the R. P. U. P. Act which discriminates between one citizen and another. Whoever happens to commit an offence under that Act is liable to be dealt with under the Act.

75. Mr. Desai, however, submitted that in so far as the legislation discriminates against an accused charged with an offence under that Act from an accused charged with an offence under general criminal law, by denying him copies under Section 173 (4) of the Code, by allowing the officers inquiring into the offence to record his confessions : by making the confessions admissible in such a case and by making other special provisions for the investigation and control of offences under the R. p. U. P. Act. the Act is hit by Article 14 of the Constitution. It is no doubt true that Article 14 condemns discrimination not only by substantial law but also by the law of procedure. But. as stated above, it does not prohibit reasonable classification with the rational object. When it declares that every one is equal before the law, it means that no one shall claim special privilege and all classes of persons are equally subject to the ordinary law of the land. When it guarantees equal protection of the laws, it means that all persons in the same situation and in the like circumstances are protected equally.

76. No person who has committed an offence relating to railway property within the meaning of the R. P. U. P, Act is discriminated against from any other person who has committed a like offence. Article H does not forbid reasonable classification between persons who are accused of offences under R. P. U. P. Act and persons who commit offences outside that Act. The classification is based on intelligible differentia which distinguishes persons grouped together in the category of persons found in unlawful possession of railway property from persons committing other offences. The differentia in question has also a reasonable relation to the objects sought to be achieved by the R. P. U. P. Act, namely, to protect the railway property and to provide a special machinery for enquiring into and punishment of offences. The officers of the Railway Protection Force have to appear before the ordinary Courts as complainants. The offence will be tried in ordinary course in the manner prescribed by the Criminal Procedure Code.

77. The principle of equality does not mean that every law must have universal application for all persons who are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment. Having regard to the nature of the 'railway property' as defined in the R. P. F. Act and the R. P. U. P. Act and having regard to the number of offences, which are taking place in the railway, the Parliament in its wisdom distinguished for the purposes of enquiry into such offences, person who commits such offences from the person who committed other offences. It is, therefore, a classification for good reasons. It is based upon real and substantial distinction bearing a reasonable and just relation to the object sought to be attained. The classification is not made arbitrarily and without any substantial basis. The State has the power of 'classification' on a basis of rational distinctions relevant to the particular subject dealt with. There is a nexus between the basis of classification and the object in this case because the object is to facilitate detention and enquiry into offences relating to unlawful possession of railway property. The argument of Mr. Desai that Section 9 of the R. P. U. P. Act is in contravention of Article 14 of the Constitution must be therefore rejected.

78. It was argued by Mr. Desai that Section 9 of the R. P. U, P. Act is in contravention of Article 20 (3) of the Constitution inasmuch as it requires a Person,

who may be an accused person and who is summoned by an R. P. F. Officer to state the truth. He also submitted that if the word 'person' in that section does not include the 'accused', then any confession taken by the R, P. F. Officer is in contravention of Article 20 (3). A similar point has been dealt with by the Supreme Court in the aforesaid decision in *Ramesh Chandra Mehta v. State of West Bengal* : 1970 CriLJ863 . J. C. Shah, J. (as he then was) speaking for the Court has dealt with the point in para. 15 of the Judgment at page 947. It was held following the decision in *Bhagwandas Goenka v. Union of India* and overriding the decision of the Calcutta High Court to the contrary that a person does not stand in the character of an accused person until there is a formal accusation made against him before a Court of justice.

79. Article 20 (3) lays down that no person accused of any offence shall be compelled to be a witness against himself. It is only when a person can be said to be a witness before Court that the prohibition prescribed by Article 20 (3) comes into operation. If a person who is not accused of any offence, is compelled to give evidence, and evidence taken from him under compulsion ultimately leads to an accusation against him, that would not be a case which would attract the provisions of Article 20 (3). The main object of Article 20 (3) is to give protection to an accused person not to be compelled to incriminate himself and that is in consonance with the basic principle of criminal law accepted in our country that an accused person is entitled to rely on the presumption of innocence in his favour and cannot be compelled to swear and condemn himself. The accusation of any offence which is an essential condition for the application of Article 20 (3) is a condition precedent for the application of the principle prescribed by the said Article.

80. There is no such accusation until the officer of the Railway Protection Force files a complaint against the person. The argument of Mr. Desai that Section 9 of the R. P. U. P. Act is in contravention of Article 20 (3) must be there-fore rejected. In our opinion, an officer of the Railway Protection Force is not a Police Officer. He has to file a complaint before a Magistrate, after completing his enquiry, if he is satisfied that there is sufficient evidence to be placed before the Court, which prima facie discloses the offence having been committed by a person. Hence until

such a complaint is filed, there is no formal accusation which is the condition precedent for the application of Article 20 (3) of the Constitution.

81. It was next contended by Mr. Desai that in any event, having regard to the provisions of Section 8 (2). the officer of the Railway Protection Force was bound to follow the provisions of Chapter XIY of the Code of Criminal Procedure relating to information to the Police and their powers to investigate, as if the offence under Section 3, which is non-cognizable under Section 5 was a cognizable offence and as if the enquiry which was being made by the Enquiry Officer was an investigation by a police officer. In other words, he tried to submit that all the provisions of the Criminal Procedure Code, without any limitations whatsoever, were attracted to the enquiry held by an officer of the Railway Protection Force because Section 8 (2) lays down that the officer of the Force, 'may exercise the same powers and subject to the same provisions as the officer in charge of the police station may exercise and is subject to under the Code of Criminal Procedure.'

82. In making this submission, Mr. Desai ignores the words : 'for this purpose' in Section 8 (2) of the R. P. U. P. Act. which has a reference to the enquiry to be conducted under Section 8 (1). The powers of the Police invested in the officers of the Railway Protection Force are limited to the purpose for which they must be exercised. The purpose is 'to enquire into the charge' against a person when the person is arrested by an officer of the Railway Protection Force for an offence punishable under the Act. Having regard to the limited purpose of the powers, it is not possible to say that the Parliament intended to incorporate the entire Chapter XIY of the Criminal Procedure Code with regard to the enquiry into the offence under the R. P. U. P. Act, What was intended was merely conferring certain powers and imposing certain restrictions on the officers of the Railway Protection Force, conducting the enquiry under Section 8 (1).

83. Considering the nature and purpose of the enquiry, all that the Parliament intended was to confer on the officers some of the powers of the Police and not all the powers and duties prescribed in Chapter XIY of the Code. In spite of the provisions of Section 8 (2). Parliament has enacted some sections which are

somewhat similar to the provisions of Chapter XIY of the Criminal Procedure Code. Proviso (a) to Section 8 corresponds to Section 60 and Section 170 of the Criminal Procedure Code. Proviso (b) to Section 8 is substantially similar to Section 169 of the Code of Criminal Procedure. Section 9 (1) is similar to Section 160 of the Criminal Procedure Code Section 10 is similar to Section 165 of the Criminal Procedure Code. Having regard to the provisions of Section 14, it is clear that these provisions were enacted by the Parliament in substitution of the corresponding provisions in the Code of Criminal Procedure. Therefore, the argument that the Parliament intended that the entire Chapter XIY is applicable is untenable.

84. Again if at all the Parliament intended that a charge-sheet under Section 173 (1) is to be filed by the Officers of the Railway Protection Force, the Parliament would have said so. We have carefully considered all the sections in Chapter XIY and we find that it is Possible that the Parliament intended by enacting the provisions under the R. P. U. P, Act that a person from whom or against whom an enquiry is made by the Officers of the Railway Protection Force should not be able to question the authority of these officers to inquire into the offence or to collect facts relating to the offences, and/or to refuse to state the truth before them. We do not wish to lay down, however, that any particular section in Chapter XIY may not apply to the enquiry to be held by the R. P. F. officer because the only section which was discussed in the course of arguments before us was Section 173 : and the present application under Section 561-A is directed against the order refusing copies which were demanded Under Section 173 (4). It is, therefore, unnecessary for us to pronounce any final opinion with regard to the applicability of any other sections of the Chapter XIY or any other Chapter of the Criminal Procedure Code to the enquiry held by the Railway Protection Force Officer.

85. The only question that remains to be considered is whether Mr. Desai is right in his contention that Section 173 of the Criminal Procedure Code applies to an enquiry under Section 8 of the R. P. U. P. Act. This point is not res integra. It is well settled that Section 173 (41 of the Code of Criminal Procedure does not apply unless there is a charge-sheet filed by the Police under Section 173 (1) See the Assistant Collector of Customs v. L.R Melyani : 1970 CriLJ885 . Where the

criminal prosecution is instituted on a private complaint, the documents mentioned in Sub-section (4) of Section 173 cannot be made available to the accused. In an unreported judgment D/- 15-7-1968 in Criminal Revn. Appln. No. 321 of 1968 (Bom), Kotwal, C. J. held that even where the police filed a complaint and not a charge-sheet or report as required by Section 173 (1), the accused was not entitled to copies under Section 173 (4). In Criminal Revn. Appln. No. 1135 of 1969 decided on 15-1-1970 (Bom). Deshpande. J. held that in respect of a prosecution instituted on a complaint by the R. P. F. Officer under Section 3 (a) of the R. P. U. P. Act, the accused was not entitled to the benefit of Section 173 (4). A similar view was taken by Rege, J. in the unreported Judgment in Criminal Revn. Appln. No. 156 of 1973 (Bom) which arose out of a prosecution under the R. P. U. P. Act. We agree with these decisions

86. Mr. Desai, however, submitted that the said judgments cannot be said to be correctly decided as there was no rational explanation as to why the Parliament, which stated that the offence should be inquired into as a cognizable one though it is declared to be not a cognizable offence, should discriminate against an accused charged under R. P. U. P. Act in the matter of supply of copies. It is not for us to question the wisdom of Parliament. We have to interpret the section as it stands. Section 173 (1) can have no application to complaint filed by an officer of the Railway Protection Force as he is not a 'police officer' and the complaint which he files is not a 'police report' within the meaning of Section 173 (1) and/or Section 190 (1) (b) of the Code of Criminal Procedure.

87. An officer of the Railway Protection Force has to file a complaint like any person other than a police officer. The complaint made by him is a complaint as defined in Section 4 (h) of the Criminal Procedure Code, as it is a complaint made in writing to the Magistrate under the Criminal Procedure Code that some person had committed an offence. It may be that in certain cases a police report may also be regarded as a complaint. That is why in defining the word 'complaint', the Criminal Procedure Code expressly excludes the report of the Police Officer in Section 4 (h). As an officer of the Railway Protection Force is not a 'police officer', he can only ask the Court to take cognizance of his complaint under Section 190 (1) (a) of the Criminal Procedure Code. Mr. Desai's argument that the enquiry

under Section 8 of the R. P. U. P. Act is a camouflage for investigation under Chapter XIY of the Code of Criminal Procedure or in substance and in reality a 'police report' or charge-sheet under Chapter XIY of the Criminal Procedure Code and therefore, any complaint filed by the Officer of the Railway Protection Force is a report by Police Officer within the meaning of Section 173 (1) of the Criminal Procedure Code is, therefore, untenable.

88. Mr. Desai next argued that even if Section 173 (4) is inapplicable to an enquiry under Section 8 of the R. P. U. P. Act, every accused against whom a complaint was filed before a Magistrate, was entitled to ask the complainant to the supply of copies of at least the documents which are referred to in the complaint as a matter of fair play and natural justice. He submitted, relying upon the list of witnesses and the list of documents annexed to the complaint in this case, which are referred to above, that the accused is entitled to all the copies of the documents which are mentioned in the list of documents annexed to the complaint. This contention is without any merit. A party to a litigate on cannot demand copies from the other side as a matter of right. It is only if law enables him to get the copies from the other side that he can ask the other side to furnish copies. Mr. Desai is unable to point out any provisions of the Criminal Procedure Code and/or any other relevant Act which entitled the accused in a case under the R. P. U. P. Act to demand copies from the complainant.

89. Mr. Tipnis, the learned Assistant Government Pleader drew our attention to a Judgment of Deshmukh and Apte, JJ. D/- 14-7-1971 in Criminal Revn. Appln. No. 1037 of 1970 (Bom) which arose out of a prosecution under the Imports and Exports Control Act, 1947 and wherein it was laid down that the accused had no right to obtain copies of the police statements before the commencement of the trial, as Section 173 (4) of the Code was inapplicable to a prosecution under that Act. Mr. Tipnis therefore, submitted that, even in the present case, as Section 173 (4) of the Code is inapplicable, the accused cannot ask for supply of copies of documents mentioned in the list annexed to the complaint, which includes the statements of the witnesses already examined or are likely to be examined by the complainant. The contention of Mr. Tipnis must be upheld as the accused has no right to be furnished with copies by the complainant under any law.

90. Notwithstanding this, relying on a judgment D/- 3-12-1973, delivered by me while sitting singly, in Criminal Revn. Appln. No. 1033 of 1973 (Bom) (reported in 19751 77 Bom LR 214 Mr. Desai submitted that the statements of at least the witnesses, who were examined by the complainant before the framing of the charge and of the witnesses, who are likely to be examined in proof of the case must be ordered to be produced in Court by the complainant and inspection of the said documents must be given to the Counsel of the accused, including the right to take copies of the said statements in Court, if so required. Mr. Tipnis, the learned Assistant Government Pleader, appearing for the State, fairly stated that the State had no objection to the production in Court of such statements, Mr. Porus Mehta appearance for the Attorney General also agreed that although he was appearing for the Attorney General and was concerned with the constitutional point only, the requisites of a fair trial required such an order to be made in every case. In his opinion, the judgment in Criminal Revn. Appln. No. 1033 of 1973 (Bom) was welcome in the interest of fair trial of the accused charged with offences under the R. P. U. P. Act and in cases instituted by officers like the Railway Protection Force clothed with powers of the police in the matter of enquiring into the offences.

91. The grounds discussed so far were the only grounds urged in support of the Petition. No other ground was urged in support of the prayer for quashing the proceedings or the charge. The only order to which the Petitioner is, therefore, entitled to is an order for production in the trial Court of statements of witnesses already examined by the complainant or likely to be examined hereinafter in the Court, recorded by the Officers of the Railway Protection Force in the course of the inquiry relating to the offences which is the subject-matter of the complaint in the present case. We therefore order that the said statements be produced in the Court of the Presidency Magistrate, trying the case. The accused and his Counsel shall be entitled to take copies thereof,

Gandhi, J.

I am of the same opinion generally for the reasons given by my learned brother, but having regard to the important points as also to the facts that in effect, we are going to decide an important question, which was in conflict, I desire to add a few

words by way of further reasons for these conclusions.

92-93. Three questions which arise in this Criminal Revision Application are;-

- (i) Whether the Officers of the Railway Protection Force while exercising powers under the R. P. U. p. Act are police officers within the meaning of Section 25 of the Evidence Act ?
- (ii) Whether the provisions of the R, P. U. P. Act are in violation of the provisions of Article 14 and Article 20 (3) of the Constitution and. therefore, ultra vires and
- (iii) Whether the accused persons tried under the R. P. U. P. Act are entitled to get the copies of the statements and documents relied upon by the prosecution before the trial begins or at any other stage ?

94. The most important point is whether the officer of the Railway Protection Force is a police officer. The Full Bench decision of our, High Court in ILR 51 Born 78 has dealt with this subject thoroughly and I am in complete agreement with the decision laid down by the Full Bench, which is also binding upon this Court. We were also pointed out the decision in : AIR1932 Pat293 , (Radha Kishun Marwari v. King Emperor) which is also a decision of the Full Bench consisting of Judges of eminence. With respect, I do not agree with the narrow interpretation placed on the term 'police officer' in that decision. The questions, which we have to decide in this connection are:

1. Merely because an officer is not called a police officer, he would not answer the description of a police officer under Section 25 of the Evidence Act. As it has been rightly held in the Full Bench we should not go only by the term or the designation given by the legislation but what we should find out is whether the officer concerned is exercising all the powers of a police officer which enables him to extort a confession which confession can be used against him if the provisions of Section 25 of the Act do not apply.

It will be pertinent to note here, there-fore, what were the provisions which were considered by the Full Bench decision under the Bombay Abkari Act, 1878, which led the Full Bench Decision to conclude that the officer exercising the powers

under that Act was an officer meeting the description of the Police Officer under Section 25 of the Evidence Act. Section 41 of the Bombay Abkari Act, 1878. as it originally stood, reads as under:

Every person arrested and thing seized under Section thirty-six, thirty seven or forty shall be forwarded without delay to the officer in charge of the nearest police station, who shall inquire into and deal with the case as one of an offence for which the Police may arrest without a warrant.

95. By Bombay Act No. XII of 1912, the original Act was amended and for our consideration, the relevant provisions of the amended Act are : the substitution of Section 41 (1) and (2) with the proviso and Sections 41-A, 41-B and 41-C. The new provisions entirely changed the position of the officer under the Abkari Act (Act No. XII of 1912) and it provided:

25. For Section 41 of the said Act, the following shall be substituted:

41. (1) Every Abkari Officer not below such rank as Government may prescribe shall within the area for which he is appointed have Power to investigate all offences punishable under this Act.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police-station for the investigation of a cognizable offence.

Provided that:

(i) If such officer is of opinion that there is not sufficient evidence or reasonable amount of suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence, and shall make a full report of the case to his official superior and be guided by the order which he shall receive on such report;

(ii) the power of an officer empowered under this section shall be subject to such further modifications or restrictions as Government may prescribe.

41-A. Every person, arrested and thing seized under Section 36, 37 or 40 shall, unless the arrest or seizure has been made by an Abkari Officer exercising powers under Section 41, be forwarded without delay to the nearest Abkari Officer exercising such powers, or, if there be no such officer within a reasonable distance, to the officer in charge of the nearest Police Station.

41-B (1) Any Abkari Officer empowered to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without a warrant for an offence punishable under this Act.

(2) When any person has been arrested under Section 38-A for a bailable offence punishable under the Indian Penal Code any Abkari Officer empowered under Sub-section (D) to grant bail shall have power to grant bail to such person in accordance with the provisions of the Code of Criminal Procedure, 1898.

41-C. When anything has been seized by an Abkari Officer exercising powers under Section 41 or has been sent to him in accordance with the provisions of Section 41-A, such officer, after such enquiry as may be necessary,-

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken.

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of the seizure to the Collector.

(c) if no offence appears to have been committed, - shall return it to the person from whose possession it was taken.

96. Construing these provisions, the Full Bench held that the Officers under the Abkari Act were clothed with almost all necessary powers which were exercised by

police officers under Chapter XIY of the Code of Criminal Procedure. 1898 and were Police officers within the meaning of Section 25 of the Evidence Act. 1872, and any confession made to such an officer in the course of his investigation under the Abkari Act or the Criminal Procedure Code is inadmissible in evidence. The ratio of the Full Bench decision, as I have already observed before, is that if an officer, though not designated as a police officer, is clothed with such powers, which a police officer exercises or all the powers exercised during the course of the investigation of a cognizable offence, so as to enable to such an officer to obtain or extort confessions and exercise other powers, which are contemplated by the Criminal Procedure Code, then such confessions do fall within the meaning of Section 25 of the Evidence Act and they should be made inadmissible.

97. No doubt, it is a matter of history; why confessions made to the Police Officers should not be made admissible in evidence. But to Put it in no better language than as has been observed with approval, the quotation which has been taken from Allahabad decision viz., *Queen Empress v. Babu Lal* ILR (1884) All 509. in the words of the Full Bench (Old field J.) at p. 513 : 'The broad ground for not admitting confessions made to a police officer is to avoid the danger of admitting? false confessions, but the necessity for the exclusion disappears in a case provided for by Section 27, when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given.'

98. Another aspect of this question is that a police officer is not defined in the Criminal Procedure Code, but is defined in Section 11 of the Bombay Act No. XXII of 1951 as follows:

11. 'Police Officer' means any member of the Police force appointed or deemed to be appointed under this Act. and includes a special or an additional Police officer appointed under Section 21 or 22.' Under Section 4 (p) of the Code of Criminal Procedure, 'Officer-in-charge of a police-station' includes, when the officer-in-charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house, who is next in rank to such officer and is above the rank of constable, or when the State Government, so directs, any other police officer so present.

99. In *Badaku Joti v. State of Mysore* AIR 1966 SC 1746, both the Full Bench decisions of our High Court and Patna High Court were considered and their Lordships observed : (Wanchoo, J, delivering the Judgment for the Bench):

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

100. Now, having dealt with the provisions of the Bombay Abkari Act, and taking into consideration the provisions, being Sections 8 and 9 of the R. P. U. P. Act and keeping in mind Section 5 of the said Act. 'Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) an offence under this Act shall not be cognizable' can be said that the Full Bench decision is available when the provisions are different from which the provisions were considered by the Full Bench decision, the important distinctions, which are apparent:

(1) that as regards an officer of the Railway Protection Force, acting under the R. P. U. P. Act, he has to enquire into a charge against such person and for this purpose, the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898) when investigating a cognizable case. In the first instance, the R. P. F. Officer is an officer appointed under the R. P. F. Act, 1957. Section 14 of that Act lays down that: Any superior officer or member of the Force making an arrest under this Act, shall, without unnecessary delay, make over the person so arrested to a police officer, or in the absence of a police officer, to take such person or cause him to be taken to the nearest police station.

It is the same R, P, F. Officer; while conducting an enquiry under the R. P. U. P. Act, certain further powers are given for the purpose of enquiry and if I were to hold that the powers given under Section 8 (1) when exercised under the R. P. U.

P. Act, the same officer becomes the Police officer, but when he discharging the duties under R. P. F. Act, he is not a police officer, which would not be a consistent way of construing the sections. As I see the whole idea of the introduction of Section 8 (1) and the other relevant sections is with a view to assist the R. P. F. Officer to carry out their duties, namely, the better protection and security of the railway property and if the main object of the R. P. F. Act is the better security and protection of the railway property, that does not cease to be the main object for the R, P. U. P. Act. Secondly, as quoted above, Sections 41, 41-A, 41-B and 41-C of the Bombay Abkari Act do not mean any distinction between the one officer and the other officer under the Abkari Act, but all the officers were clothed with the powers which are mentioned therein. The wording are 'power to investigate all offences punishable under the Act' and in the conduct of such investigation of the offences shall exercise the powers conferred by the Code of Criminal Procedure, 1898 and thus all the powers of a police officer, including the arrest, bail and seizure along with the power to investigate were given to all the officers under the Bombay Abkari Act. No doubt, it can be said that even under the Abkari Act, the main purpose was the revenue. When the legislature in so unmistakable terms empowers an officer with a power of investigation and a power of arrest, bail and seizure of the articles, it cannot be said that the officers were not clothed with sufficient powers to enable them to be called 'police officers' within the meaning of Section 25 of the Evidence Act.

101. I would like to add that besides the distinction which I have shown, there is a direct authority, wherein the sections substantially worded like Sections 8 and 9 of the R. P. U. P. Act, have been considered by the Supreme Court. In *Badaku Joti v. State of Mysore* : 1966 CriLJ1353 while dealing with the provisions of Section 21 of the Central Excises and Salt Act, 1944, Section 21 has been quoted, which is as under:

21. (1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

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

Provided that...

102. When construing this section, the Supreme Court has taken the view that the provisions of this section are different from the provisions of another statute which was considered in Raja Ram Jaiswal's case AIR 1964 SC 828 consisting of three Judges. In view of the direct consideration of these provisions by the Supreme Court in this decision of five Judges, which decision is binding upon this Court, I feel that it is not possible to construe similar provisions and to hold that an officer under the R. P. U. P. Act is clothed with all the powers of the Police Officer and, therefore, he is a Police Officer within the meaning of Section 25 of the Evidence Act.

103. I would like to refer to the provisions which were considered in Raia Ram Jaiswal's case AIR 1964 SC 828. The Supreme Court in that decision was considering the provisions of Bihar and Orissa Excise Act (Act No. 2 of 1915) and Sections 77 (2) and 78 of the Notification No. 470-F dated 15th January, 1919. These sections are quoted in a dissenting judgment by Raghubar Dayal in the same case at p. 839. The relevant provisions for consideration and for comparison with the provisions which we are called upon to construe in this case are Sections 77 (2) and 78 (3). It will be again pertinent to note that in that section also the words used are : 'Any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under this Act, may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under aforesaid provision.'

104. Section 78 (1) says:

Any Collector, or any Excise Officer empowered under Section 77. Sub-section (2) may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise-

(a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police station, by Sections 160 to 171 of the Code of Criminal Procedure, 1898 (5 of 1898), and (b) as regards offences punishable under Section 47, Section 49, Section 55 or Section 56 of this Act any of the powers conferred upon Police Officers in respect of cognizable offences by clause first of Sub-section (1) of Section 54 and by Section 56 of the said Code.

And the said portions of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the State Government by rule made under Section 89. Clause (o).

(3) For the purposes of Section 156 of Criminal Procedure Code, 1898 (5 of 1898) the area to which an Excise Officer empowered under Section 77, Sub-section (2) is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer in charge of such station.

105. It would be seen that these are the provisions with which we are concerned. Again, there is a direct power to investigate and there is a direct reference to Sections 160 to 171 being applied and there is a direct provision stating that for the purposes of Section 146, the area to which an Excise Officer empowered under Section 77 (2) is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer in charge of such station. In view of this distinction and in view of the decision in *Badaku Joti v. State of Mysore* : 1966 CriLJ1353 I hold that an officer under the R. P. F. Act is not a police officer within the meaning of Section 25 of the Evidence Act.

106. I would like to refer to one of the arguments of Mr. Desai knowing the difficulty of these two decisions. Mr. Desai urged that the Court should hold that the words 'inquire into' and the words 'inquire into the charge' should be replaced by the words 'investigate into the charge' or should be interpreted as an enquiry which includes an investigation. It is not new that a doctrine of incorporation has

been followed by the drafters of the legislation of the various Acts and when incorporation of certain Act into another Act. if the intention is to take only certain connotation and meaning, which are applied to certain terms, then to avoid repetition of productions of all these things, it is referred to in brief by referring to the provisions which they want to apply. But. when we are considering Section 8 (2) of the R. P. U. P. Act. what we have to consider is whether all the provisions including the provisions of the Code of Criminal Procedure are incorporated, and whether the officer of the Railway Protection Force is deemed to be an officer attached to a police station. When the Legislature wanted that that should be the intention as stated both in the Abkari Act as amended in 1912 and in the Bihar and Orissa Excise Act, Sections 77 and 78 (1) and (2). the Legislature has specifically stated so. Therefore, the only interpretation which can be out on Section 8(1) and (2) is that in order to facilitate the primary object of the R. P. F. Officer to conduct an enquiry specially connected with the railway property in respect of which it is suspected that that property is in unlawful possession of somebody such police officer, in a cognizable case exercises such powers, is allowed to exercise those powers in the enquiry. Merely because certain powers of a police officer are given to an officer under another Act, it cannot be said that he becomes a police officer and he exercises all the powers, becomes a police officer either within the meaning of the Criminal Procedure Code or within the meaning of the Evidence Act. I am not in a position to accept the argument advanced by Mr. Desai that no meaning should be given to the words 'enquire into the charge' against such person and we should hold that it is an investigation, equal to an investigation carried by an officer of the Police Station. No doubt, there is a great substance in his submission that clothed with this power, an officer of the R, P. F. may during the enquiry get certain confessions from the persons who are suspected of having committed an offence. The law of evidence is wide enough and if Section 25 does not apply, the provisions of Section 24 of the Evidence Act are still applicable and it is open to the person against whom a confession is alleged to have been obtained, to retract that confession and rebut that presumption which is raised under the particular section.

107. Mr. Desai further argued that in view of the provisions of the R. P. F. Act, even if the Court would come to the conclusion that an officer is a police officer,

when that officer exercises power under the R. P. U. P. Act, he is doing nothing else but investigating into a crime which is to be directly taken for a trial and, therefore, there is a direct nexus between the enquiry and the trial. Mr. Desai urged that considering the provisions of the Customs Act, and Central Excise Act the Supreme Court did not hold those officers as Police Officers because between the enquiry held by such officers and the trial under the provisions of the Sea Customs Act, old as well as new, there was a complaint to be filed after sanction being obtained. Mr. Desai urges that in the absence of a such sanction being required or a complaint being filed after the sanction, it must be held by this Court that here there is nothing to show that the nexus between the enquiry and the trial is bridged at any stage. I am not in a position to accept the argument of Mr. Desai because reading the provisions of the Act, itself, it is clear that it is incumbent upon an officer of the R. P. U. P. Act to file a complaint. Section 8 (2) (b) clearly states that if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior. This clearly indicates that in a case enquired into by a junior officer, he has after the enquiry to make a report to his superior officer and thereafter if it is found that the enquiry reveals that an offence has been committed, then file a complaint to the Magistrate of which the Magistrate can take cognizance under Section 190-A and not Section 190-B of the Code of Criminal Procedure on a police report. Therefore, in view of this provision I am of the opinion that Mr. Desai's contention that the enquiry under the R. P. U. P. Act is only for a purpose of a criminal trial cannot be accepted and one must not forget the main purpose of the R. P. F. Act and the R. P. U. P. Act and why these officers are appointed and why these powers are given to them. The main purpose of the R. P. U. P. Act is to protect and secure the railway property.

108. Mr. Desai also forgets the provisions of Section 5 of the R. P. U. P. Act. In view of the fact that Section 3 provides for punishment of five years and a fine of Rs. 1,000/- the legislature has thought it fit to make it abundantly clear that the offence shall not be cognizable offence. Now, if we have to attach any importance

to this section, it means that no police officer can take any cognizance and only a magistrate can take cognizance of an offence under the R. P. U. P. Act and this is sufficient to show that in case of trial, it depends upon the decision of the Officer to come to the conclusion whether the enquiry has shown sufficient evidence to place the complaint before the Magistrate or not. It is true that Mr. Desai submits that the subsequent judgments of the Supreme Court do not in terms say that the ratio laid down in Raja Ram Jaiswal's case : 1964 CriLJ705 is not a good law.

But we have to analyse all the decisions given by the Supreme Court thereafter and as I have observed before the judgment of Raja Ram Jaiswal's case is in relation to the facts and the provisions of the law which they were considering in that case, one has to find out whether the provisions of the present Act under consideration are different from the provisions in the Act under consideration in Raja Ram Jaiswal's case. I have already pointed out. two most important distinctions, which I found and as laid down by subsequent Supreme Court Judgments are : If there are no provisions to make the appointments of officers under a particular Act, to submit a report and/or file a charge-sheet as required under Section 173 (1) of the Code of Criminal Procedure, can we come to the conclusion that in spite of these provisions not being there, the officer conducting enquiry under the relevant Act can be held to be a police officer. As observed in the case of Badaku Joti Savant v. State of Mysore : 1966 CriLJ1353 , the provisions of the Central Excises and Salt Act, 1944, which were considered by the Supreme Court are almost similar to the provisions which we have to consider under the R. P. U. P. Act. In view of this decision, which is binding on us, I hold that an officer of the Railway Protection Force even while exercising the powers under the R. P. U. P. Act. he is not a police officer within the meaning of Section 25 of the Evidence Act. This disposes of the first question, viz. whether the officer under the R. P. U, P- Act is a police officer or not.

109. As regards the second question, viz., that the provisions of R. P. U. P. Act, particularly, Section 9 is in violation of the provisions of Article 14 or Article 20 (3) of the Constitution, I do not propose to add anything more and I am in complete agreement with what my learned brother has stated on this point,

110. I would like to add a few observations on the third question, i.e. the question of the right of the accused to set copies of the statements and documents, statements of witnesses recorded by the officer and documents relied upon by the prosecuting agency when prosecuting under the R. P. U. P. Act. This subject has also been considered by our High Court also. If one were to go to the fundamental question, viz., the question of an accused person having a right to defend when he is being tried, one will have to see the relevant provisions of the various Acts. By the Constitution, the right is provided to every individual, who is being prosecuted or charged, to defend, to exercise the right of defence and this is a very valuable right to test the evidence led by the prosecution. One of the rights exercised is that of cross-examination and under the provisions of the Indian Evidence Act. it is laid down that the previous statements, if recorded in writing, of the witnesses, who are examined at the trial, can be used for two purposes, viz. (1) to corroborate the statement under Section 157 of the Evidence Act which he gives in Court and (2) to contradict the testimony which he has given in Court. The right to cross-examination is the right of adverse party to put questions to the witnesses, who are examined by the other side to show whether that witness is telling the truth or whether the evidence of that particular witness is reliable or not. This right of cross-examination is a very valuable right. As my learned brother has stated, it is a touchstone which has stood the test of so many centuries and is even today one of the best methods to find out the truth. No doubt there are limitations in the principle of jurisprudence which we follow but knowing all the limitations, and considering the method and the manner of proving facts which are provided by the Evidence Act, this touchstone is one of the best touchstone which is held by a person exercising the right to cross-examine. Of all tests known or invented for the discovery of truth and exposure of falsehood, cross-examination is the most powerful and efficacious. The object can be achieved if only the cross-examiner can handle the weapon skilfully. The witness in his direct examination will naturally say things favourable to the party calling. But he may not have disclosed all the qualifying circumstances known to him, his motive and many other things which would make his evidence untrustworthy. He may have deliberately concealed facts within his knowledge which constitute part of the opponent's case. The art of cross-examination consists in ascertaining what can be got from the witness and

in interrogating him in a manner which would make it impossible for him to circumvent or conceal the truth. This faculty of cross-examining witnesses successfully, is one which requires profound knowledge of human nature, thorough acquaintance with the facts of the case, considerable tact, patience and study. It is an art which can be acquired after much experience. From the situation and the circumstances, the cross-examiner has to infer whether anything favourable can be extracted from the witness. And herein lies the danger, for misjudgment resulting in needless interrogation is apt to cause mischief.

111. When a right is conferred upon a party it cannot be without a remedy, and there must be a remedy. Section 145 says:

Section 145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved, but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

This provision contemplates the use of previous statements made and recorded of witnesses who are examined at the trial. Unless a party who has to exercise his right and make use of the previous statements, comes into Possession of those previous statements or knows what the previous statements made are how is he to make use of this material Looking to these provisions, it is absolutely clear to my mind that when such a right is vested in a party, both under the Constitution and special provisions of the Evidence Act the party cannot be deprived of that right by preventing him from obtaining the statements previously made by the witnesses when these statements are admittedly in the possession of the adverse party.

112. It has been brought to my notice, the judgment delivered by my brother Judge on 3-12-1973 in Criminal Revn. Appln. No. 1033 of 1973 (Bom). I have read the judgment and I am in complete agreement with the ratio laid down by the judgment. I entirely endorse the view expressed in that judgment that when such a right is to be exercised by a Counsel, there must be sufficient time for the Counsel

to exercise such right properly. If this is denied, it will render the right of exercise of cross-examination into a myth and mere right in name. I am of the opinion that the accused is entitled to know what the previous statements made by the witness and which are recorded and which are in possession of the adverse party.

113. That leads me to the next question, whether it is incumbent upon the prosecution to supply copies of these statements to the other side and whether any right is vested in the accused person to call for the copies of the statements before the trial begins. This requires consideration of the provision of the Criminal Procedure Code. As I have already observed before, that in a prosecution under the R. P. U. P. Act. it is not on a police report and Section 173 of the Criminal Procedure Code has no application, the right conferred by the legislature under Section 173 (4) cannot be said to have been conferred on the accused tried under the R P. U. P. Act. But that does not mean that the accused is not entitled or the accused is to be prevented from his right, which I have already referred to above. If one looks at the history of Section 173. which is an amendment in the year 1965; prior to Section 174 (4) being introduced, there was Section 162 (4) under the old Act and there was a right conferred on the accused to get the copies of the statements or get the statements before he cross-examined the witnesses examined by the prosecution. It is true that when the Criminal Procedure Code was amended, Sub-section (4) of Section 162 was deleted and Section 173 (4) was introduced. In this particular case, the Officer of the Railway Protection Force, exercises all the powers which a police officer stationed at a Police Station exercises during the course of investigation of a cognizable offence. That gives him right in an enquiry to interrogate and record the statements. Merely because Section 173 (4) does not apply, does it mean that these statements can be kept away from the accused and the accused be called upon to defend himself without availing himself of the valuable right to contradict if there are contradictions in the previously recorded statement I am of the opinion that in view of the principles of natural justice and fair play, which should be borne in mind while prosecuting an accused person, it could not be held that the accused is to be deprived of this right.

114. In this particular case, the facts on the record go to show that the statements were recorded. In a complaint, it is the prosecution which relies upon the statement already recorded. There is again a further admission that such statements are in possession of the prosecution. The accused in this particular case has called upon the prosecution to give them the copies or at least give them inspection. That has not been given and in my opinion, to deprive the accused of the inspection of the statements would amount to denying him the right to exercise 'which has been conferred upon him' under the Constitution and the other laws, by cross-examining the witnesses, who have been examined by the other side.

115. That leads me to the next question as to at what stage and how such inspection of previous statements for the purpose of exercising a right of cross-examination should be given to the accused. As the whole purpose of the amendment of the Criminal Procedure Code in 1956 was to expedite the trial and to cut short the preliminaries before the accused person is put to face his trial. I feel that it is better that the earlier this inspection is given to the accused the better, so that the exercise of the right can be properly done. Merely getting an inspection by the accused is not sufficient. He has to instruct his Advocate or Counsel after getting the inspection to make use of them and this cannot be done on the spur of the moment if at the last moment when the Advocate rises for cross-examination of the witnesses if the copies are given at that moment.

116. Mr. Tipnis the learned Assistant Government Pleader appearing on behalf of the State has fairly stated before us that there is no desire to keep back the material from the other side. In view of this fair statement made at the bar, I am of the view that the prosecution, after filing a complaint, should produce copies of all the statements of the witnesses, which they intend to examine and the documents on which they want to rely upon in the Court and the accused may inspect the same and if he So chooses, may take copies of them at his own costs, which would facilitate him to exercise his right of defence. I do not think that the Courts have no power to make the prosecuting agency to produce these documents in Court. Section 165 gives very wide powers to the Court and and the Court can at any stage call upon the parties to produce such documents, which, in the opinion of the Court are necessary for administering justice. I think the production of these

documents for inspection is not only relevant but a very important thing for the administration of justice and exercise of right of defence on the part of the accused.

117. Miss Thakore, in the other appeal, which has been heard along with this Criminal Revision Application, brought to our notice that in case in which she appears, as a matter of fact the officer of the Railway Protection Force had furnished the copies to the accused at the time when the complaint was filed. If it had been done under the impression that the officer was bound under Section 173(4), by merely the impression of the officer, it does not necessarily follow that the R. P. F, officers are police officers and their complaint is a police report under Section 193(1). But, if it had been done with an idea of a fair play then I say that it was done well and as I have observed before, in my opinion, these copies of statements of witnesses which are likely to be examined and the documents on which the prosecution relies, should be produced in Court and the accused may avail himself of the opportunity to inspect and take such copies as he likes. That disposes of this question and as Mr. Tipnis has rightly stated, all the statements of the witnesses already examined and all the statements of the witnesses who are likely to be examined should be produced in Court for inspection of the other side.

P. C. : For the reason stated above, the orders passed by the Presidency Magistrate dated August 3, 1973 and September 7, 1973 are set aside and the complainant is directed under Section 165 of the Evidence Act to produce in the Court the true copies of the statements of the witnesses already examined and to be examined hereafter by the complainant and of the documents on which the complainant desired to depend, and it is declared that the accused and his Counsel shall be entitled to inspect the same and take copies thereof if necessary in Court. It is declared that Section 9 of the R. P, U. P. Act is not ultra vires the Constitution. Rule made absolute to the extent mentioned hereinabove. Rule in terms of prayer (aa) in the petition is discharged.