
(1986) 02 BOM CK 0002
In the Bombay High Court

Abdul Rajak Haji Mohammed

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (1986) CriLJ 2018

Hon'ble Judges : D.N. Mehta, J

Bench : Single Bench

Judgement

D.N. Mehta, J.—This writ petition involves an interesting question whether a person summoned u/s 40 of the Foreign Exchange Regulation Act can claim the right to have his advocate present during the course of his interrogation by the Officers of the Enforcement Directorate.

2. The Petitioner in this Criminal Writ Petition Abdul Rajak Haji Mohammed was summoned by the Officers of the Enforcement Directorate u/s 40 of the Foreign Exchange Regulation Act, 1973 (Act 46 of 1973) (hereinafter referred to as "the F.E.R.A."). The brief facts are that on 29-6-1985, the residential and office premises of the petitioner Abdul Rajak Haji Mohammad were searched by the Enforcement Directorate as also by the Officers of the Directorate of Revenue Intelligence. In the course of the search certain incriminating documents were recovered from the office premises and an amount of 450 Hongkong Dollars was seized from his residence.

On 30-6-1985 one Mohammed Isaq Kapadia, the Marketing Manager of the New Bengal Lodge of which the present petitioner was a Partner, was arrested on 1-7-1985, Mohammed Isaq was produced before the learned Metropolitan Magistrate, Esplanade. A Remand Application was filed in the Court. Mohammed Isaq was ordered to be remanded in custody for a period of seven days.

On 1-8-1985 a Detention Order was issued under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) against

the present

Petitioner Abdul Rajak as also against Mohammed Isaq, the Marketing Manager. The Advisory Board under the COFEPOSA recommended the release of Mohammed Isaq on 11-10-1985. The petitioner Abdul Rajak filed a Civil Writ Petition in the Delhi High Court and the detention order was set aside on 13-12-1985.

On 2-1-1986, the petitioner Abdul Rajak filed an Application for Anticipatory Bail in the Court of Session, Greater Bombay, being Anticipatory Bail Application No. 2 of 1986. At the hearing of the said Application the Enforcement Directorate gave an undertaking that they would give forty-eight hours' notice to the petitioner Abdul Rajak before arresting him. Thereupon the Application came to be rejected. The learned Sessions Judge directed the petitioner Abdul Rajak to surrender his Passport and to attend the Enforcement Directorate daily for a period of one month.

On 3-1-1986 the petitioner Abdul Rajak attended the Enforcement Directorate. At this time he applied to the Officers of the Directorate to allow his Advocate to remain present during his interrogation. This Application was rejected by the Enforcement Directorate on 6-1-1986.

On the same day, i.e. on 6-1-1986, the petitioner Abdul Rajak made an Application to the Court of Session praying that the officers of the Enforcement Directorate be ordered to permit the petitioner's Advocate to remain present during the course of his interrogation.

3. The learned Sessions Judge by his order dated 14-1-1986 was pleased to reject the Application of the petitioner Abdul Rajak Haji Mohammed praying for leave to let his Advocate remain present during the course of his interrogation. The petitioner Abdul Rajak has now filed this Criminal Writ Petition praying that his Application dated 6-1-1986 be allowed and the Order passed by the learned Sessions Judge dated 14-1-1986 be set aside.

4. Shri Jaisinghani, learned Counsel appearing on behalf of the petitioner, has submitted that it was permissible to have an Advocate remain present during the interrogation by the Officers of the Enforcement Directorate u/s 40 of the F.E.R.A. itself. Assuming that the Court did not agree with this proposition, then the right to the presence of an Advocate during interrogation was conferred by Article 22(1) of the Constitution by implication, Shri Jaisinghani submitted that the Supreme Court had observed that an accused person arrested by the Police under the provisions of the Code of Criminal Procedure was entitled to the presence of his Advocate during the course of his interrogation by the Police. Shri Jaisinghani argued that there was no reason why a similar right should not be conferred upon an accused or a suspect under the F.E.R.A.

5. Shri Jaisinghani contended that it was more imperative for an accused person or a suspect to have the presence of his Advocate during the course of the

investigation by the Enforcement Officers for the reason that the safeguards granted to accused persons arrested by the Police under the provisions of the Code of Criminal Procedure and the safeguards granted by the Evidence Act were not available to an accused or a suspect under the F.E.R.A. Shri Jaisinghani submitted that any statement made by an Accused or a suspect of an incriminating nature or a confession was admissible in evidence, if recorded by the Enforcement Officers. Shri Jaisinghani has referred to certain Authorities of the Supreme Court which I shall consider hereinafter. Shri Jaisinghani submitted that it, therefore, became obligatory upon the Court to see that statements of an incriminating nature or confessions made by an accused or a suspect before the Enforcement Officers were not obtained by such Officers by means of any physical chastisement or through physical or mental pressure. Shri Jaisinghani submitted that in order to ensure that the Investigating Officers conducted the proceedings in a just, fair and reasonable manner, it was necessary to have the presence of his Advocate, for the presence of the Advocate would ensure that the Investigating Agency did not resort either to corporal methods or to any coercive pressure.

6. Before I deal with the Authorities cited at the Bar, it will be pertinent to set out the provisions of Arts: 20 and 22 of the Constitution. Article 20 Sub-article (3) provides :

20(3) No person accused of any offence shall be compelled to be a witness against himself.

7. Article 22 Sub-article (1) provides : "22(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice."

8. Shri. Jaisinghani referred to the observations of their Lordships of the Supreme Court in the case of Nandini Satpathy Vs. P.L. Dani and Another, , wherein their Lordships held:

We hold that Section 161 enables the Police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of Police interrogation - not, as contended, commencing in Court only. In our judgment the provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one's investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read "compelled testimony" as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like not legal penalty for violation.... The right to consult an advocate of his choice shall not be denied to

any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation. Moreover, the observance of the right against self - incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice.

Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence.... We think that Article 20(3) and Article 22(1) may in a way, be telescoped by making it prudent for the Police to permit the advocate of the accused, if there be one to be present at the time he is examined. Overreaching Article 20(3) and Section 161(2) will be obviated by this requirement. We do not lay down that the Police must secure the services of a lawyer. That will lead to "police-station-lawyer" system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project.

9. Shri Jaisinghani also relied upon a ruling of a learned single Judge of the Delhi High Court in the case of K. T. Advani v. The State, reported in 1985 Cri LJ 1325. The learned single Judge was called upon to decide the same issue as in the present case whether an accused or a suspect was entitled to the presence of an Advocate of his choice during an enquiry or investigation under the Foreign Exchange Regulation Act. The learned single Judge in a well-considered and lucid judgment was pleased to observe :.

If a suspect is entitled to presence of Counsel in an investigation, governed by the Code of Criminal Procedure, there is nothing in the provisions of the Foreign Exchange Regulation Act, which purport, explicitly or impliedly, to oust such a right. If the right to the presence of counsel be fundamental to the rule of law, it makes little difference if the investigation is one under the Code of Criminal Procedure or independently of it...But even apart from Article 22(1) of the Constitution and in situations to which the Article does not in terms apply, there is no doubt the right to presence of counsel in an enquiry or investigation under the Foreign Exchange Regulation Act on the simple ground that in the absence of any provisions to the contrary in the Act, such a right would naturally flow from the duty of the authorities under the Act to follow only such procedure in a matter which may involve the deprivation of personal liberty which is "just, fair and reasonable". The divergent procedure of investigation provided by the Foreign Exchange Regulation Act which has the effect of divesting a suspect of certain rights, privileges and safeguards, which are available in a corresponding investigation under the Code of Criminal Procedure, would, in itself, provide a further justification for the right to the presence of counsel in proceedings under

the Foreign Exchange Regulation Act, Apart from the constitutional protection by way of right to presence of counsel, to deny to such a suspect the right to consult counsel and to the presence of counsel at the stage of investigation, where the investigatory procedure marks a departure from the normal procedure, and deprives such a suspect of a number of rights, privileges and safeguards, would open such procedure to a justifiable criticism of being "unjust, unfair and unreasonable". If the enquiry or interrogation in camera could be justifiably carried out under the Act, without some of the fundamental safeguards provided for such interrogation in the Criminal P. C. and if any statement that may be made by the suspect, whether of a confessional nature or otherwise could be used as evidence against the suspect in an eventual trial and where a suspect is under a statutory duty to speak the truth in answer to all questions that may be put to him in the course of interrogation and if he can be eventually given stringent punishment not only for the offences under the Act but also if he failed to state the truth in the course of interrogation, to deny such a suspect the right to consult counsel and to the presence of counsel at the time of interrogation would be antithesis of a just, fair and reasonable procedure.

10. Now, it is necessary to point out that a person arrested by the Police under the provisions of the Code of Criminal Procedure enjoys certain time-honoured safeguards provided under the Code of Criminal Procedure and the Evidence Act. u/s 161 the Police are entitled to record the statement of an accused, but such a statement is inadmissible in evidence under the provisions of Section 161(1). Again under the provisions of Section 163 of the Cri. P.C. no Police Officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in Section 24 of the Evidence Act. The proviso to Sub-section (1) of Section 164 lays down that no confession shall be recorded by a Police Officer on whom any power of a Magistrate has been conferred by any law.

11. Then again the provision of Section 25 of the Evidence Act makes any confession made to a Police Officer by a person accused of any offence inadmissible in evidence. Section 24 of the Evidence Act makes any confession made by an, accused person inadmissible in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or, promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him,

12. In a series of judgments, the Supreme Court has held that customs officers were not in the same position as Police Officers. Hence, these safeguards would not be available to a person accused of an offence under the Customs Act. In the case of Romesh Chandra Mehta Vs. State of West Bengal, , the Supreme Court was called upon to decide whether the provisions of Section 25 of the Evidence

Act applied to a person who was accused of any offence under the Customs Act. Their Lordships observed ; -

The broad ground for declaring confessions made to a Police Officer inadmissible is to avoid the danger of admitting false confessional statements obtained by coercion, torture or ill-treatment. But a Customs Officer is not a member of the Police force. He is not entrusted with the duty to maintain law and order. He is entrusted with 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 incharge 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; to screen or X-ray the body of a person for detecting secreted goods; to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act; to obtain a search warrant from a Magistrate to search any place within the local limits of the jurisdiction of such Magistrate, to collect information by summoning persons to give evidence and produce documents; and to adjudge confiscation u/s 182. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods.... He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report u/s 173 of the Criminal P.C. He can only make a complaint in writing before a competent Magistrate...We are of the view that a Customs officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an enquiry is made are not covered by Section 25 of the Evidence Act.

13. The Supreme Court in the case of Percy Rustomji Basta Vs. State of Maharashtra, again held that a Customs Officer making an enquiry u/s 107 and Section 108 of the Customs Act was not a Police Officer and the person against whom the enquiry was made was not an accused person. A statement made by such a person in that enquiry was not a statement made by a person accused of an offence. Their Lordships observed :

It is not clear when an enquiry is being conducted u/s 108 of the Customs Act, and a statement is given by a person, against whom the enquiry is being held it is not a statement made by a person accused of an offence and the person who gives, the statement does not stand in the character of an "accused person". Therefore, the first essential fact to be established to attract Section 24, is lacking in this case, as the appellant was not an "accused person"...We hold that by the mere fact that the Customs Officer P, W. 5, who recorded the statement, Ex. T. explained the provisions of Section 193, I.P.C. and informed the appellant that he was bound to tell the truth and that he is liable to be prosecuted if he made a false statement, there was no threat given to the appellant. We

accordingly hold that Section 24 of the Evidence Act has no application and the statement, Ex. T was properly admitted in evidence in the trial of the appellant.

14. Shri Gupte has argued that the Enforcement Officer under the F.E.R. A. stood in the same position as the Customs Officers and an Enforcement Officer also was not a Police Officer. On the reasoning of their Lordships in Romesh Chandra Mehta Vs. State of West Bengal, an Enforcement Officer had no power to investigate an offence triable by a Magistrate, nor had he the power to submit a report u/s 173 of the Criminal P.C. He can only make a complaint in writing before a competent Magistrate. Shri Gupte is therefore justified in his submission that an Enforcement Officer investigating an offence under the F.E.R.A. is not a Police Officer and that being the case, the safeguards referred to by me herein above, i.e. with regard to Sections 161,-162 and 163 of the Criminal P.C. as also Section 24 of the Evidence Act, would not be available to accused or suspect interrogated by an Enforcement Officer.

15. It is pertinent to point out that Enactments like the F.E.R.A., the Customs Act, the Excises and Salt Act, are legislations which cover a wide network and range of offences which go under the soubriquet of "economic Offences". These Offences tend to affect the State policies with regard to financial economy. Stringent situations call for stringent measures. We are, therefore, faced with a piquant situation with the problem of State policies on the one hand and individual rights on the other. In such circumstances the effort of the Court must at all times be to strike a harmonious balance between the two. The policies of the State must not be permitted to be jeopardised by a few piratical individuals or a gang of individuals out to make personal gains. On the other hand, the Court cannot permit laxity of legal safeguards which have been tested by time in the name of security of the State. Concisely put, State policies cannot be sacrificed at the altar of individual rights nor individual rights at the altar of State policies.

16. In Nandini Satpathy's case, Krishna Iyer, J. referred to the Miranda case decided by the U. S. Supreme Court. Prior to the Miranda case, the Supreme Court of U.S.A. dealt with the case of Escobedo v. Illinois (1964) 378 US 478 in which the Appellant repeatedly asked for and was denied the opportunity to see his Attorney during his interrogation by the Police. Incriminating statements made by him during interrogation were used as evidence against him. Escobedo challenged his conviction as a denial of his right to counsel. Goldberg, J. observed :

We have... learned...that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system "worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.

We hold, therefore, that where, as here," the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment...and that no statement elicited by police during the interrogation may be used against him at a criminal trial.

17. Two years later the Supreme Court of the United States decided the case of *Miranda v. Arizona* (1966) 384 US 436 in which Chief Justice Warren made the following observations :

...the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him and that he has a right to the presence of an attorney.

The Supreme Court of America has, therefore, held that the right of an accused to the presence of his Advocate during custodial interrogation is fundamental.

18. On a reading of Article 20(3) and Article 22(1) of our Constitution, it appears clear that an accused person is entitled to the presence of his advocate during his interrogation by a Police Officer. That position has been asserted without reservation in *Nandini Satpathy Vs. P.L. Dani and Another*. If an accused person during interrogation by a Police Officer be permitted the right to the presence of his Advocate, I do not see any reason why an accused person or a person suspected of an offence should not be afforded the same right when he is being interrogated by an Officer of the Enforcement Directorate? There does not appear to be anything in the Foreign Exchange Regulation Act which forbids the presence of an Advocate during interrogation. Quite the contrary, in my view, the provisions of Section 40 of the F.E.R. A. permit such a right to a person summoned under the section.

19. Section 40 of the F.E.R.A. provides:

40(1) Any gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course of any investigation or proceeding under

this Act.

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

(3) All persons so summoned shall be bound to attend either in person or by authorised agents, 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 produce such documents as may be required:

Provided that the exemption u/s 132 of the Civil P.C. 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

20. It is pertinent to point out two aspects of the provisions of Section 40 of the F.E.R.A. Firstly, under Sub-section (3) a person summoned under Sub-section (1) was bound to speak the truth regarding any subject upon which he was questioned. If he did not speak the truth, he would invite upon himself the penalty prescribed under Sub-section (4). Under that subsection every investigation or proceeding carried on by the Enforcement Officer shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Section 193 provides for punishment for giving false evidence in a judicial proceeding or fabricating false evidence for the purpose of being used in any judicial proceeding. Section 228 of the Indian Penal Code provides for intentional insult or interruption to a public servant sitting in a judicial proceeding. Therefore, Sub-sections (3) and (4) when read together would lead to this position that a person when summoned u/s 40 Sub-section (1) before the Enforcement Officer was bound to speak the truth and he would be faced with prosecution if it was found that he was stating falsehood or fabricating evidence. Such a person could also be prosecuted if he insulted the Investigating Officer or interrupted the proceedings. Further consequences were that any incriminating statement made by him before the Investigating Officer or a statement made in the nature of a confession would be admissible in evidence against him.

21. The second aspect which needs to be considered is that under the provisions of Sub-section (3) of Section 40 of the F.E.R. A. a person summoned u/s 40(1) was bound to attend either in person or by an authorised agent. Therefore, this sub-section permits a person summoned to appear before the Officer in person or to send his authorised agent provided the Officer so directed. In my view, the expression "authorised agent" would also embrace an Advocate. If, therefore, Sub-section 40(3) permitted a person summoned before the Enforcement Officer to be represented by an Advocate at the time of interrogation, provided the Officer permitted him to do so, then I see no objection to the presence of an

Advocate during the interrogation of a person so summoned. Again, as pointed out by Anand J. in Advani's case 1985 Cri LJ 1325, if such a right to the presence of an Advocate during interrogation was available to an accused person when arrested and interrogated by a Police Officer under the Code of Criminal Procedure, there is no reason why such a right could not be extended to a person summoned u/s 40 of the F.E.R.A.

22. Shri. Gupte contended that the Supreme Court in the case of Nandini Satpathy Vs. P.L. Dani and Another, dealt only with persons accused of an offence and interrogation carried out under the Code of Criminal Procedure. Shri Gupte pointed out that in the instant case the petitioner was not accused of any offence, that he was only summoned to answer certain questions by the Enforcement Officer and, therefore, the ratio of Nandini Satpathy's case would not apply in the instant case. It is true that petitioner has not been arrested, nor has he been accused of any offence. There is, however, no doubt that the petitioner is a suspect in the sense that he is suspected of having committed a breach of the Foreign Exchange Regulation Act. If there was any doubt with regard to this position, it needs only to be pointed out that in the remand Application of Mohammed Isaq submitted by the Enforcement Directorate, it was stated that the present petitioner had committed offences under the F.E.R. A. Mohammed Isaq in his statement had implicated the present petitioner. A Detention Order has been passed against the petitioner on much the same grounds as stated heretofore. Hence there cannot be any doubt that the present petitioner is under a strong suspicion and he could be termed as "a suspect". In Nandini Satpathy's case, Krishna Iyer J. dealt with this situation which he termed as "near custodial interrogation". His Lordship observed :

The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation.

23. If once it is shown that the petitioner is suspected of having committed some offence under the F.E.R.A., then the right to the presence of an Advocate must be extended even in the instant case.

24. The next question which must be considered is what is the role which an Advocate has to play during the-custodial or near-custodial interrogation? Shri Jaishingani has emphasised that the Advocate must be permitted to object to questions which posed a threat to the suspect and he should also be permitted to object to such questions which would lead to incriminating answers. In Nandini Satpathy's case 1978 Cri LJ 968 Krishna Iyer J. stated that the lawyer had a right to object to certain questions. These observations, to my mind, are merely suggestive and cannot be deemed to be mandatory in every case. To my mind, to permit an Advocate to participate in the interrogation and to raise objections

to questions would mean that the interrogation and enquiry would be converted into quasi judicial proceedings. I am aware that u/s 40 Sub-section (4), the investigations and proceedings under that section are deemed to be the judicial proceedings, but that is only for the purpose of Sections 193 and 228 of the Indian Penal Code. If an Advocate was permitted to actively participate during interrogation and investigation, it would mean that the interrogation and investigation would be riddled with objections and interruptions, right or wrong, and that would render the entire proceedings a farce. This certainly cannot be permitted during investigations into serious crimes. The Advocate, therefore, can only be permitted to be a silent spectator in the proceedings and cannot be allowed to be an active participant. If he has any objection to the questions asked or to the conduct of the investigation, he shall make his objections in writing after the interrogation is concluded.

25. Shri Jaisinghani submitted that the Advocate should be permitted to interrupt the proceedings if an Officer used third degree methods or what is euphemistically termed as "Police methods". One can only state that he would be a foolhardy Officer who would physically assault an accused or a suspect in the presence of his Advocate. But assuming that such an assault did take place all that the Advocate could do was to object to such conduct. Even that could be done after the proceedings had concluded.

26. In order to ensure a smooth interrogation and investigation, it would be advisable for the Advocate to sit behind the suspect at a distance of about six feet to avoid any promptings. The Advocate, as, I have pointed out, shall not be permitted to raise any objection of any kind during the interrogation and the proceedings. At the conclusion of the interrogation and proceedings, the Advocate will be permitted to place his objections, if any, in writing before the Investigating Officer. That, to my mind, should adequately protect the interest of the accused or the suspect.

27. For the sake of clarification, it needs to be stated that it is not in every case of interrogation by Enforcement Officers that an Advocate can claim to remain present. There is no desire to cultivate "a breed of Police Station lawyers", if one may borrow the expression of Krishna Iyer, J. It is only in cases where the accused or the suspect makes a Written application to the Enforcement Officers to permit his Advocate's presence during interrogation, that the accused or the suspect must be permitted to do so.

28. In the result, the Rule is made absolute. The order of the learned Sessions Judge dated 14-1-1986 is set aside. The petitioner will be permitted to have his Advocate present during his interrogation by the Enforcement Officers on conditions mentioned hereinabove.