(1988) 06 GUJ CK 0010

In the Gujarat High Court

Alok Badridas Agrawal APPELLANT

Vs

B.M. Bhatt, Superintendent, Central Excise and Another RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Central Excises and Salt Act, 1944 — Section 21
Criminal Procedure Code, 1973 (CrPC) — Section 162, 169, 171, 173, 174
Evidence Act, 1872 — Section 25
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37, 41, 42, 43, 44
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1989) CriLJ 765 : (1988) 2 GLR 1404

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—The only question which requires determination in this revision application is whether the Superintendent, Central Excise, who has investigated the case is required to file complaint or submit charge-sheet before the Magistrate for the offences alleged to have been committed by the petitioner-accused under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as "the Act".

2. Learned Counsel Mr. Barot submitted that u/s 53 of the Act the powers of an officer in charge of a police station for investigation of the offences under the Act are given to the Central Excise Officers, the customs officers and other officers. Therefore, respondent No. 1 is required to submit charge-sheet after completion of the investigation and he cannot file private complaint before the learned Magistrate. For emphasizing his submission, he submitted that under different provisions of the Act different types of powers are conferred upon the officers or other persons mentioned therein. The learned Counsel heavily relied upon Section 53 which empowers the Central Govt. or the State Govt. to invest any officer mentioned therein with the powers of an officer-in-charge of a police station for the investigation of the offences under the Act and he submitted that

the said officer for all purposes is an officer in charge of a police station for investigation or is a police officer for the purposes of this Act and hence he has to file report or charge-sheet as provided u/s 169 or 174 of the Criminal P. C. and he cannot file the private criminal complaint. He also referred to Section 41(1) of the Act which empowers the Magistrate to issue warrant for arrest or search warrant as provided in the section. Under Sub-section (2) of Section 41 the officer of a gazetted rank as mentioned therein is entitled to authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest or search a building, conveyance or place. Section 42 empowers certain officers or certain persons being officers superior in rank to a peon, sepoy or constable to enter into, search any building, conveyance or place, seize, tender and arrest any person whom he has reason to believe to have committed any offence punishable under Chap. IV relating to any narcotic drug or psychotropic substance. He also referred to Section 52 Sub-section (3) wherein it is provided that every person arrested and article seized under Sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to -

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered u/s 53.

It is his contention that the officer-in-charge of the nearest police station and the officer empowered u/s 53 are having same powers and, therefore, they are required to follow the same procedure. He, therefore, submitted that as officer-in-charge of the nearest police station is required to submit report either u/s 169 or Section 174 of the Criminal P. C., the officer empowered u/s 53 also should follow the same procedure.

3. For deciding this question, if we refer to Section 53 of the Act it is abundantly clear that the powers which are conferred on any officer as specified in Section 53(1) or (2) are the powers for the investigation of the offences under the Act but he is not an officer-in-charge of a police station or he is not deemed to be an officer-in-charge of a police station. Section 53 of the Act reads as under:

53(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act,

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

(Emphasis added)

Section 53(1) empowers the Central Government after consultation with the

State Government to invest any officer of the department of central excise, narcotics, customs, revenue, intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for purposes of investigating the offences under the Act. Same is the position with Sub-section (2) which empowers the State Government to invest any officer of the department of drugs control, revenue or excise or any class of such officers with the similar power. But this section nowhere provides t hat the said officer shall be deemed to be an officer-in-charge of a police station or that he shall be considered to be an officer-in-charge of a police station for the purposes of this Act. Under the Criminal P. C. a police officer can submit a charge-sheet u/s 173 of the Criminal P. C. or his report u/s 169 of the Code. All that Section 53 provides is that for the purpose of his inquiry the officer empowered u/s 53 shall have the powers of an officer-in-charge of police station at the time of investigating the offences under this Act. Section 37 of the Act provides that every offence punishable under this Act is a cognizable offence. Therefore, the officer empowered u/s 53 shall have all the powers of an officer-in-charge of a police station investigating a cognizable case. But these powers are only limited for the purpose of investigation and it does not include the power of filing charge-sheet u/s 173 of the Criminal P. C. Further, customs officers or other officers who investigate the offence under the Act are not police officers,

4. In support of his submission, Mr. Barot, the learned Counsel for the petitioner, relied upon the decision in the case of Raja Ram Jaiswal Vs. State of Bihar, . In my view, Raja Ram Jaiswal''s case is considered by the Supreme Court and distinguished in the decision in the case of Badku Joti Savant Vs. State of Mysore, . Further, Badaku Joti''s case is followed by the Supreme Court in the decisions in the cases of Romesh Chandra Mehta Vs. State of West Bengal, , Illias Vs. Collector of Customs, Madras, , Balkishan A. Devidayal Vs. State of Maharashtra, .

5. In Badku Joti Savant Vs. State of Mysore, the Supreme Court considered the provision of Section 21 of the Sea Customs Act, 1878 and the material part of the said section, Section 21(2), is as under:

(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...

As per this provision the Central Excise Officer is entitled to exercise the same powers as the officer-in-charge of a police station can exercise under the Code while investigating a cognizable case, yet the Supreme Court held that the aforesaid section does not empower the Central Excise Officer to file a charge-sheet u/s 173 of the Criminal P. C. and that Central Excise Officer is not a police officer. It further held that in Raja Ram Jaiswal''s case 1964 (1) Cri LJ 705 (SC) the Court has considered Section 78(3) of the Bihar and Orissa Excise Act, 1915 which provided in terms that for the purposes of Section 156 of the Cri. P. Code, 1898 an area to which an excise officer empowered u/s 77(2) is appointed shall be deemed to be a police station officer and such officer shall be deemed to be an officer-in-charge of such police station. The Court, therefore, held that Section 21 of the Sea Customs Act is not on par with the provision in Section 78(3) of the Bihar and Orissa Excise Act. It would be worthwhile to reproduce the following discussion from the aforesaid decision:

It does not, however, appear that a Central Excise Officer under the Act has power to submit a charge-sheet u/s 173 of the Cr. P.C. u/s 190 of the Cr. P.C. a Magistrate can take cognizance of any offence either (a) upon receiving a complaint of facts which constitute such offence, or (b) upon a report in writing of such facts made by any police officer, or (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. A police officer for purposes of Clause (b) above can in our opinion only be a police officer properly so-called as the scheme of the Code of Criminal Procedure shows and it seems therefore, that a Central Excise Officer will have to make a complaint under Clause (a) above if he wants the, Magistrate to take cognizance of an offence, for example, u/s 9 of the Act. 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 (1) 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 Vs. State of Bihar, , 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 u/s 77 Sub-section (2), is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer-in-charge of such station". It cannot, therefore, be said that the provision in Section 21 is on par with the provision in Section 78(3) of the Bihar and Orissa Excise Act. 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 power to submit a charge sheet u/s 173 of the Cr. 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.

The Court further held that merely because the powers of investigation are conferred, it does not make an investigating officer a police officer otherwise any person entrusted with the investigation u/s 202 of the Criminal P.C. would become a police officer.

6. Aforesaid decision is relied upon and followed in the case of Romesh Chandra Mehta Vs. State of West Bengal, , and in the case of Illias Vs. Collector of Customs, Madras, .

7. In Ramesh Chandra''s case the Court considered the provisions of the Sea Customs Act and the powers of a Custom Officer and held that a Custom 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 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 Criminal P. C.

8. In the case of Illias Vs. Collector of Customs, Madras, , the Court in paragraph 11 held that in the majority judgment in The State of Punjab Vs. Barkat Ram, a comparison was made between the duties and powers of police officers and Customs Officers which may be summarised as follows:

(1) The police is the instrument for the prevention and detection of crime which can be said to be the main object of having the police. The powers of Customs Officers are really not for such purpose and are meant for checking the smuggling of goods and due realization of customs duties and for determining the action to be taken in the interest of the revenue of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines.

(2) The customs staff has merely to make a report in relation to offences which are to be dealt with by a Magistrate. The Customs Officer, therefore, is not primarily concerned with the detection and punishment of crime but he is merely interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties.

(3) The powers of search etc., conferred on the Customs Officers are of a limited character and have a limited object of safeguarding the revenues of the State and the statute itself refers to police officers in contradistinction to Customs Officers.

(4) If a Customs Officer takes evidence u/s 171 and there is an admission of guilt, it will be too much to say that that statement is a confession to a police officer as a police officer never acts judicially and no proceeding before him is deemed to be a judicial proceeding for the purpose of Sections 193 and 228 of the Penal Code or for any other purpose.

In para 13 the Court has held as under:

The ratio of the decision in Badku Joti Savant Vs. State of Mysore, is that even if an officer under the special Act has been invested with most of the powers which an officer-in-charge of a police station exercises when investigating a cognizable offence he does not thereby become a police officer within the meaning of Section 25 of the Evidence Act unless he is empowered to file a charge-sheet u/s 173 of the Cri.P.C.

The Court negatived the contention that by necessary implication the power to file a charge-sheet flows from powers which are conferred upon the customs officer. The Court held that it is difficult and indeed it would be contrary to all rules of interpretation to spell out any such special power from any of the provisions contained in the Customs Act, 1962.

9. Under the Customs Act, 1962 the Custom Officer has power to search a person and to arrest him, to search premises and to stop and search conveyances and to examine persons and also has power to summon persons to give evidence and to produce documents and to seize the goods, documents and things which are liable to confiscation. He has also power to release a person on bail. He is entitled to order confiscation of smuggled goods and impose penalty on persons proved to be guilty of infringing the provisions of the Customs Act and yet it has been considered and held that Custom Officers would not be police officers.

10. In my view, the same would be the position with regard to the officers who are empowered or invested with certain powers and duties under the Act.

11. u/s 41(1) a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf-

(i) may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chap. IV, or

(ii) may issue a warrant for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chap. IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

12. Similar powers are given to officers mentioned in Sub-section (2) i.e. to authorize any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest such a person or search a building, conveyance or place or himself arrest a person or such a building conveyance or place.

13. It should be noted that by any stretch of imagination neither the Magistrate nor the other officers would be police officers.

14. u/s 42 of the Act any of the officers mentioned therein who are empowered by the Central Government or the State Government may search any building, conveyance or place, seize such article or material and detain and search or arrest any person whom he has reason to believe to have committed any offence punishable under Chap. IV. u/s 43 these officers are entitled to seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chap. IV has been committed. He can also detain and arrest any such person u/s 49 the said officer can stop and search any conveyance if he has reason to suspect that that conveyance is about to be used for the transport of any narcotic drug or

psychotropic substance.

15. Further, Section 51 of the Act provides that provisions of the Cri.P.C. 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act. But this section nowhere provides that warrants issued and arrests, searches and seizures made under the Act shall be deemed to be done by an officer in charge of a police station. If the authorised officer were deemed to be an officer in charge of a police station, then there was no necessity of incorporating this Section 51. u/s 67 such authorised officer can call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the Act or any rule. He can also direct ,any person to produce or deliver any document or thing useful or relevant to the enquiry and examine any person acquainted with the facts and circumstances of the case.

16. These powers are conferred upon the officers with a limited object of detection and prevention of crime under the Narcotics Act. Different powers are given to different officers but that does not mean that all these officers are police officers or are deemed to be police station officers. Only limited powers which are necessary and incidental to prevent and detect the crime under the Act are given to these officers. Unlike a police officer who has the general power under the Code to investigate all cognizable cases, the power of an officer under the Act is restricted to the offences under the Act and that too only for the purpose of investigation. They have no power to submit the report to a Magistrate u/s 190 of the Cri. P.C. with a view that the cognizance of an offence be taken by a Magistrate. They have to file a complaint under Clause (1) of Section 194 to a Magistrate to enable him to take cognizance of an offence committed under the Act.

17. Further, in the case of Balkishan A. Devidayal Vs. State of Maharashtra, , while dealing with the question whether an officer of the Railway Protection Force making an inquiry under the Railway Property (Unlawful Possession) Act, 1966 is a police officer for the purpose of Section 25 of the Evidence Act and Section 162 of the Criminal P.C. and as such any confession or incriminating statements recorded by him in the course of an inquiry u/s 9 of the Act if inadmissible in evidence, after considering all the decisions including the decisions referred to above, the Supreme Court negatived the said contention and held that the officer would not be a police officer because he has no power to submit charge-sheet. The Court held that from a comparative study of the relevant provisions of the 1966 Act and the Code, it is abundantly clear that an officer of the RPF making an inquiry u/s 8(1) of the 1966 Act does not possess several important attributes of an officer-in-charge of a police station conducting an investigation under Chap. XIV of the Code. The character of the ''inquiry'' is different from that of an ''investigation'' under the Code. The official status and powers of an officer of the force in the matter of inquiry under the 1966 Act differ in material aspects from

those of a police officer conducting an investigation under the Code. Further, in paras 53 and 54 the Court held as under:

53. Prime facie there is much to be said for the reasoning advanced by the learned Counsel for the appellant, but as a matter of judicial discipline we cannot deviate from the ratio of The State of Punjab Vs. Barkat Ram, and Badku Joti Savant Vs. State of Mysore, , and the primary test enunciated therein for determining this question. Indeed, we are bound by the decision in State of U.P. Vs. Durga Prasad, which, following the ratio of the aforesaid cases, has held that an officer of the RPF conducting an inquiry u/s 8(1) of the 1966 Act, cannot be equated with an officer in charge of a Police Station, making an investigation under Chap. XIV of the Code.

54. It may be recalled that the primary test evolved in Badaku Joti Savant''s case by the Constitution Bench, is : Whether the officer concerned under the special Act, has been invested with all the powers exercisable by an officer-in-charge of a Police Station under Chap. XIV of the Code, qua investigation of offences under that Act, including the power to initiate prosecution by submitting a report (charge-sheet) u/s 173 of the Code. In order to bring him within the purview of a ''police officer'' for the purpose of Section 25, Evidence Act, it is not enough to show that he exercises some or even many of the powers of a police officer conducting an investigation under the Code.

Finally the Court held that an officer of RPF conducting an inquiry u/s 8(1) of the 1966 Act has not been invested with all the powers of an officer-in-charge of a police station making an investigation under Chap. XIV of the Code particularly when he has no power to initiate prosecution by filing a charge-sheet before the Magistrate concerned u/s 173 of the Code which has been held to be the clinching attribute of an investigating police officer.

18. In view of the aforesaid decisions of the Supreme Court, the contention raised by the learned Counsel cannot be accepted as the officers authorised under the Narcotic Drugs and Psychotropic Substances Act, 1985 are not deemed to be officers in charge of police station and cannot be said to be officers in charge of police station for all the purposes even though they exercise many of the powers of a police Officer conducting an investigation under the Criminal P. C. as the said powers are limited for the purpose of investigating the offences under the Act. Hence these officers cannot file charge-sheet after completing the enquiry and are required to file a complaint.

19. Hence the application is rejected.