
(1973) 09 BOM CK 0004
In the Bombay High Court

Dr. Arun Ganesh Phansalkar and Another	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 15-09-1973

Acts Referred:

Companies Act, 1913 — Section 240
Constitution of India, 1950 — Article 20(3)
Evidence Act, 1872 — Section 132

Citation : (1974) CriLJ 995 : (1974) MhLj 173

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Judgement

Chandurkar, J.—These two applications arise out of Session Trial No. 14 of 1973 in which 44 accused persons from village Erangaon in Tahsil Saoner. District Nagpur are being tried on the allegations that they committed the murder of one Ramdas on 11-8-1972. Dr. Arun Ganesh Phansalkar, applicant in Criminal Application No. 257, who is an Assistant Surgeon at the Health Unit Hospital Saoner, is alleged to have carried out the post-mortem examination of the dead body of deceased Ramdas at Saoner. Head Constable Mohboobkhan son of Mohammad Khan, applicant in Criminal Application No. 261 of 1973, is alleged to have made the inquest panchanama and the spot panchanama when the dead body of the deceased was taken out from a well. The prosecution at the trial examined several witnesses. Both the applicants were cited as witnesses but were not examined by the prosecution, because, according to them, the two witnesses were hostile to the prosecution. Therefore, after evidence of all the witnesses examined by the prosecution was recorded, the prosecution filed an application before the learned Additional Sessions Judge praying that these two witnesses should be examined as Court witnesses, because their evidence was essential for a just decision of the case. On this application the Additional Sessions Judge passed an order issuing summonses to the two applicants for their examination as Court witnesses. The learned Judge took the view that the evidence of both these witnesses was essential and that since some doubt was

thrown on their conduct they would also set an opportunity to explain their conduct before reaching any decision as regards the correctness or otherwise of the post-mortem report and inquest panchnama. It may be stated that the prosecution has already filed charge-sheets against both these witnesses for offences under Sections 201 and 218 of the Indian Penal Code because, according to the prosecution these witnesses had suppressed facts with the intention of screening the offenders from legal punishment. The learned Judge observed in his order that since both these witnesses were facing trial in sister cases they would be entitled to object to answering such question as may tend directly or indirectly to incriminate them, and that if they were compelled to give answers to such Questions no such answers shall be proved against them in any criminal proceeding including Sessions Trial Nos. 23 and 47 of 1973.

2. It appears that after summonses were issued for these two witnesses, they claimed protection against testimonial compulsions under Article 20 (3) of the Constitution of India. It was contended before the Additional Sessions Judge that they could have been prosecuted along with the 44 accused persons in a joint trial and that by compelling them to give evidence in the trial against these 44 persons, the guarantee under Article 20 (3) would be violated. The learned Additional Sessions Judge relying on the decision of the Supreme Court in *Laxmipat Choraria and Others Vs. State of Maharashtra*, held that the protection under Article 20 (3) was available only to an accused and not to witnesses and there was no constitutional bar in examining the two applicants as Court witnesses. When it was contended before the learned Judge that the statements which the two applicants would be required to make while giving evidence were likely to prejudice their defence in the trial for the offences with which they were charged the learned Judge held that there was sufficient protection in the proviso to Section 132 of the Evidence Act. In the order the learned Judge also again made it clear that both the witnesses were entitled to object to answer such questions as may tend directly or indirectly to incriminate them, that if they were compelled to give answers to such questions no such answers shall be proved against them in any criminal proceeding and in particular in Sessions Trials Nos. 23 and 47 of 1973 and that the evidence in the Sessions Trial could in no way be read as evidence in the separate trials against the two witnesses. Both the applicants have now filed these two revisions applications challenging the order passed by the Additional Sessions Judge rejecting the objections that the applicants could not be examined as witnesses.

3. Common arguments were advanced in both the cases. The only argument advanced on behalf of the applicants was that the words of Article 20 (3) of the Constitution of India do not restrict the protection against self-incrimination only in respect of the proceeding in which the person claiming the protection is accused of an offence and it is argued on the authority of *Charles Counselman v. Frank Hitchcock*. (1890) 35 Law Ed 1110 that the protection under Article 20 (3) is available even where a person against whom a prosecution is pending appears as a witness in another case and according to the learned Counsel even in

Session Trial No. 14 of 1973 which is against the 44 accused persons the applicants cannot be asked to give evidence and answer questions which are likely to incriminate them.

4. Article 20 of the Constitution of India reads as follows:

20. Protection in respect of conviction for offences.-- (1) No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

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

Article 20 (3) embodies the fundamental principle of the English system of criminal justice that no man is bound to accuse himself and which principle later came to be embodied in the Criminal Evidence Act, 1898. which saves that though the accused is competent to give evidence on his own behalf he cannot be compelled to give evidence against himself. The same principle is adopted by the Fifth Amendment to the American Constitution by laying down that "No person ... shall be compelled in any criminal case to be a witness against himself." It is too late in the day to contend that the provisions of Article 20 of the Constitution of India should be construed in the light of the American decisions dealing with the Fifth Amendment to the American Constitution. The question whether decisions of American Courts provide any guidelines for the construction of the scope of Article 20 (3) of the Constitution of India has been the subject of several decisions in this country. The scope of the protection provided for the Fifth Amendment in the American Constitution has been enlarged by judicial interpretation by the American Courts though a literal construction of the Fifth Amendment did not contemplate such an extension. The privilege has been extended to any disclosure including the production of chattels by a legal process against a witness, to protect a witness as fully as it applies to protect a party defendant to a cause of the person accused, and though the Fifth Amendment refers to a "criminal case", it has been held to extend to any proceeding, civil or criminal, "wherever the answer might tend to subject to criminal responsibility to him who gives it". (See Basu's Constitution of India, 4th Edition, Volume II, page 20-21). The judicial extension of the privilege has been noticed by Willis in his Constitutional Law, 1936 Edition, where the learned author refers to the decision in Counselman's case, (1890) 35 L Ed 1110 relied upon on behalf of the applicant. Dealing with the extent of the privilege the learned author observed at page 518:

Extent of the privilege -- A casual reading of the guarantee against self-incrimination would suggest as the obvious meaning that it applies only to oral

testimony in a criminal proceeding by the accused defendant himself. However, the common law after 1688 excluded an accused from the witness stand and the Fifth Amendment did not overrule this principle of the common law. Hence the stipulation in the Constitution for his immunity became pointless. Therefore the Supreme Court, in order to make the constitutional provision sensible, gave a meaning to the guaranty different from its obvious meaning. In determining the new meaning the Court went back to the common law meaning, and lifted the common law doctrines beyond the reach of ordinary legislation. Hence, the distinction between an accused and others was dropped, and a new distinction between oral testimony and other evidence was developed. However after thus reading the common law into the Constitution, the Supreme Court in turn departed from the common law first in coupling up the Fourth and Fifth Amendments so as to exclude evidence illegally obtained, and again in extending protection to witnesses as well as to the accused

Against whom Available.-- The privilege is available against every branch of the Government in spite of the fact that testimonial compulsion is permitted by any branch of the Government whenever necessary to its efficient and proper functioning. It is available in Court, before legislative committees grand juries, and other tribunals. This reasonable extension of the protection against self-incrimination was established by the United States Supreme Court in (1890) 142 US 547 : 35 Law ED 1110.

4-A. In Counselman's case (1890) 35 L Ed 1110 it was contended that a witness is not entitled to plead the privilege of silence except in a criminal case against him. Repelling this contention the American Supreme Court observed:

It is broadly contended on the part of the appellee that a witness is not entitled to plead the privilege of silence, except in a criminal case against himself, but such is not the language of the Constitution. Its provision is that no person shall be compelled in any criminal case to be a witness against himself. This provision must have a broad construction in favour of the right which it was intended to secure. The matter under investigation by the grand jury in this case was a criminal matter, to inquire whether there had been a criminal violation of the Interstate Commerce Act. If Counselman had been guilty of the matters inquired of in the questions which he refused to answer, he himself was liable to criminal prosecution under the Act. The case before the grand jury was, therefore a criminal case. The reason given by Counselman for his refusal to answer the questions was that his answers might tend to criminate him, and showed that his apprehension was that, if he answered the questions truly and fully (as he was bound to do if he should answer them at all), the answers might show that he had committed a crime against the Interstate Commerce Act, for which he might be prosecuted. His answers, therefore, would be testimony against himself, and he would be compelled to give them in a criminal case.

5. This approach of the American Supreme Court has been expressly departed from and indeed rejected in the decisions of our Supreme Court. The American

decisions, therefore, cannot be of any assistance in construing the provisions of Article 20 (3) of the Constitution. This Court observed in *Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another*, which decision is affirmed by the Supreme Court in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, that the provisions of Article 20 (3) of the Constitution should not be read in the light of the American Constitution or the American decisions. In paragraph 12 of the judgment, this Court observed:

We have assistance, and more than assistance, from the decisions of the Supreme Court to which reference will be made, and these decisions, as we shall presently point out, make it clear that Article 20 (3) should be read in the context of the two clauses which precede it and this Article should not be read in the light of the American Constitution or the American decisions but more in the light of our own legislative provisions, our own legislative history, the background of English law, and the Constitution looked upon as an organic whole.

6. The decision in *Counselman's case*, (1890) 35 L Ed 1110 was expressly referred to by the Supreme Court in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*. The question there was whether in an inquiry made u/s 240 of the Companies Act, 1956, which permits investigation into the offences of the company, a person who is called upon to give evidence and produce documents can claim the protection under Article 20 (3) of the Constitution and the Supreme Court held that a general enquiry and investigation into the affairs of the company contemplated cannot be regarded as an investigation which starts with an accusation contemplated in Article 20 (3) of the Constitution. The contention raised in that case was that the words "person accused of any offence" should not receive a narrow or literal construction and they should be liberally interpreted because the clause in which they occur enshrines a fundamental constitutional right and the scope and reach of the said right should not be unduly narrowed down. Late Mr. Sastri, who appeared on behalf of the appellant in that case relied on the historical background of the doctrine of protection against self-incrimination and had pressed into service the decision in *Counselman's case* which gave a broad and liberal interpretation to the words of the Fifth Amendment to the Constitution of the United States that no person shall be compelled in any criminal case to be a witness against himself and it was argued that it was held in *Counselman's case* that the said constitutional protection was not confined only to criminal cases but it extended even to civil proceedings. Dealing with this argument the Supreme Court observed:

Thus presented the argument is no doubt attractive and its validity and effectiveness would have had to be fully and carefully examined if the question raised in the present appeal had been a matter of first impression; but the construction of Article 20 in general and Article 20 (2) and (3) in particular has been the subject-matter of some decisions of this Court, and naturally it is in the light of the previous decisions that we have to deal with the merits of the appellant's case in the present appeal." Thus, the approach which was

canvassed on behalf of the applicants in this case has been rejected by this Court and the Supreme Court. Counselman's case cannot, therefore, be of any assistance to the applicants.

7. The argument that the protection under Article 20 (3) of the Constitution is available not only to a person who is accused of an offence but must also be extended to a witness must also be rejected. Even the literal meaning of the Fifth Amendment to the American Constitution, as pointed out by Willis, was that it applied to an oral testimony in a criminal proceeding by the accused himself. The marginal heading of Article 20 is "Protection in respect of conviction for offences", and it is now well established that all the three clauses of Article 20 have to be construed as a whole. Article 20 came up for consideration before the Supreme Court in *Maqbool Hussain Vs. The State of Bombay*, The question there was whether where a person against whom proceedings had been taken by the Sea Customs Authorities u/s 167 of the Sea Customs Act and an order for confiscation of goods had been passed was subsequently prosecuted before the presidency Magistrate for an offence u/s 23 of the Foreign Exchange Regulation Act in respect of the same act the accused was entitled to invoke the provisions of Article 20 (3) of the Constitution, The Supreme Court traced the history of the guarantee against double jeopardy. It was observed that the roots of the principle of "Autrefois convict" or "double jeopardy" were to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a Court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence." It was this principle it was pointed out by the Supreme Court, which found recognition in Section 26 of the General Clauses Act and Section 403 (1) of the Code of Criminal Procedure. The Supreme Court then observed :

These were the materials which formed the background of the guarantee of fundamental right given in Article 20 (2). It incorporated within the scope the plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

The words "before a Court of law or judicial tribunal" are not to be found in Article 20 (2). But if regard be had to the whole background ... indicated above it is clear that in order that the protection of Article 20 (2) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a Court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of article 20 and the words used therein:-- "convicted" "commission of the act charged _ as _an

offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceeding therein contemplated are of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal _in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

(the underlining is mine)

The words "accused of any offence" appear only in Clause (3) of Article 20, and the Supreme Court held that since the proceedings before the Sea Customs Authorities were not a "prosecution" and the order for confiscation was not a "punishment" inflicted by a Court or Judicial Tribunal within the meaning of Article 20 (2) of the Constitution, the prosecution was not barred. Maqbool Hussain's case is, therefore, an authority for the proposition that Article 20 must be construed and read as a whole and that the proceedings in respect of which the protection provided for in Article 20 can be available are proceedings of a criminal nature against the person who is seeking the protection before a Court of law or a judicial Tribunal.

8. In Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another, this Court took the view that looking at the language used and the expression, it seemed clear that what the Constitution makers were contemplating was various privileges conferred upon persons either in the conduct of a criminal proceeding itself or in respect of a criminal proceeding. Chagla C.J. has observed:

The expressions in Clause (1) "convicted of any offence, commission of the act charged as an offence, subjected to penalty", in Clause (2) "prosecuted and punished", and in Clause (3) "accused of any offence", inevitably leads one to that conclusion. Although the marginal note does not clearly apply to all provisions of Article 20, the emphasis placed on the marginal note is "conviction for offences"." Referring to the decision in Maqbool Hussain Vs. The State of Bombay, it was pointed out:

Therefore, it is clear that Mr. Justice Bhagwati in this decision, construing Article 20 as a whole took the view and the clear view that the proceedings contemplated in Article 20. not in Cl. Clause (2) only but in the Article as a whole, were criminal proceedings, and dealings particularly with Clause (2) the learned Judge took the view that the prosecution in that context would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal.

It was again pointed out that the proceedings in respect of the various protections given by Article 20 were criminal proceedings.

9. Maqbool Hussain Vs. The State of Bombay, was again referred to by the Supreme Court in S.A. Venkataraman Vs. The Union of India (UOI) and Another,

where the question was whether, after a public servant has been dismissed as a result of an inquiry under the Public Servants (Inquiries) Act, launching of a prosecution against him for offences under Sections 161 and 165 of the Indian Penal Code and Section 5 (2) of the Prevention of Corruption Act amounts to a violation of the protection of Article 20 (2) of the Constitution. Following the decision in *Maqbool Hussain's* case, the Supreme Court held that the words "prosecution" and "punishment" had no fixed connotation and they were susceptible of both a wider and a narrower meaning; but in Article 20 (2) both these words had been used with reference to an "offence" and the word "offence" had to be taken in the sense in which it was used in General Clauses Act as meaning "an act or omission made punishable by any law for the time being in force."

10. The provisions of Article 20 were exhaustively considered by the Supreme Court in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, and it was pointed out in that case that the phrase used in Article 20 (3) was "to be a witness" and not to "appear as a witness" and it followed that the protection afforded to an accused in so far as it related to the phrase "to be a witness" was not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It was held that it was available to a person against whom a formal accusation relating to the commission of an offence had been levelled which in the normal course might result in prosecution. After referring to this decision the Supreme Court pointed out in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, that for invoking the constitutional right against testimonial compulsion guaranteed under Article 20 (3) it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution. Referring to the facts of that case the Supreme Court posed the question; "was the appellant accused of any offence at the time when the impugned notices were served on him", and observed:

In answering this question in the light of the tests to which we have just referred it will be necessary to determine the scope and nature of the enquiry which the inspector undertakes u/s 240: for unless it is shown that an accusation of a crime can be made in such an enquiry, the appellant's plea under Article 20 (3) cannot succeed.

(The underlining is mine)

Dealing with the nature of the inquiry u/s 240 of the Companies Act, the Supreme Court pointed out:

In such a case there is no accusation, either formal or otherwise, against any specified individual: there may be a general allegation that the affairs are irregularly improperly or illegally managed; but who would be responsible for the affairs which are reported to be irregularly managed is a matter which would be

determined at the end of the enquiry. At the commencement of the enquiry and indeed throughout its proceedings there is no accused person, no accuser and no accusation against anyone that he has committed an offence. In our opinion a general enquiry and investigation into the affairs of the company thus contemplated cannot be regarded as an investigation which starts with an accusation contemplated in Article 20 (3) of the Constitution." It was then pointed out:

Thus the test about the character of the proceedings and the forum where the proceedings are initiated are intended to be taken are also not satisfied

The decision in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, as also the decision in *Maqbool Hussain Vs. The State of Bombay*, therefore, clearly show that the proceeding in which the protection under Article 20 (3) can be sought by a person must be a proceeding in which he is accused of an offence. If there is no accusation in that proceeding, then the protection under Article 20 (3) cannot be invoked by a person, and he cannot decline to answer questions on the ground that he is being subjected to testimonial compulsion.

11. I may here usefully refer to a later decision of the Supreme Court in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, in which the law relating to Article 20 (3) has been put down in the form of propositions. It has been observed in paragraph 15 of the majority judgment of Sinha, C. J. as follows:

In order to bring the evidence within the inhibitions of Clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and that it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement.

This again makes it clear that the person who is being compelled to make a statement must fill the character of an accused at that time in that proceeding and it will be only then that he will be entitled to invoke the protection of Article 20 (3) of the Constitution.

12. I may also refer to a decision of Ramaswami, J. in *Subayya Gounder Vs. Bhoopala Subramanian*, in which dealing with the scope of Article 20 (3) which follows the language of the Fifth Amendment to the American Constitution, the learned Judge has observed that the rule laid down in our Constitution is narrower than the American rule as expanded by interpretation and that the prohibition operates only when an accused is sought to be forced to depose against his innocence.

13. The position also stands clarified by the decision of the Supreme Court in *R.K. Dalmia Vs. Delhi Administration*, . In that case the question was whether certain statements made by Dalmia to one Annadhanam who was a Chartered Accountant and who had been directed by the order of the Central Government to investigate into the affairs of an insurance company and report to the Government on the investigation made by him were admissible in evidence in a

prosecution started against Dalmia. Dalmia had confessed to the Chartered Accountant who was inquiring into the affairs of the Bharat Insurance Company that he had misappropriated securities of the order of Rs. two crores and twenty lakhs of the Bharat Insurance Company and that he had lost this money in speculation. Delaine with this statement, the Supreme Court held that there was no question of it being inadmissible in view of Clause (3) of Article 20 of the Constitution as it was not made by Dalmia at a time when he was accused of an offence as is necessary for the application of that Clause in view of the decision of the Supreme Court in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, where the contention that the statement need not be made by the accused person at the time when he fulfilled the character of an accused was not accepted. It may be noted that in Dalmia's case the Supreme Court has considered the decision in Kathi Kalu case as laying down that for the purpose of invoking the protection under Article 20 (3) of the Constitution, it is necessary that a person, while making the statement which he is compelled to make and in respect of which the protection against testimonial compulsion has been invoked, fulfil the character of an accused. The decision in Dalmia's case also shows that the extension of the doctrine of protection against self-in-crimination propounded by the American Supreme Court in *Counselman's case* (1890-91) 35 L Ed 1110 has not been accepted in India.

14. I may usefully refer to the decision of the Full Bench of the Madras High Court in *Collector of Customs, Madras Vs. Kotumal Bhirumal Pihlajani and Others*, in which it was held that to bring the statements in question within the prohibition of Article 20 (3) the person accused must have stood in the character of an accused person at the time he made the statement and that it was not enough that he should become an accused any time after the statements had been made. It is established law that a person cannot seek the protection of Article 20 (3) on the ground that the statements which he is being required to make are likely to lead to an accusation in a criminal prosecution at a later stage. (See *K. Joseph Augusthi and Others Vs. M.A. Narayanan, Official Liquidator, Palai Central Bank Ltd.*, .

15. A learned single Judge of the Madhya Pradesh High Court has taken the view that the protection under Article 20 (3) is confined to a person accused of an offence but it does not extend to the case of a witness summoned to give evidence against a third party and his position was sufficiently safeguarded by the provisions of Section 132 of the Evidence Act. See *State v. Shankarlal* 1959 MPLJ 213.

16. The learned Additional Sessions Judge has relied and in my opinion rightly on the decision of the Supreme Court in *Laxmipat Choraria and Others Vs. State of Maharashtra*, in which the Supreme Court has observed that Article 20 (3) protects a person who is accused of an offence and not those summoned as witnesses.

17. In the instant case it is no doubt true that there is a pending prosecution

against both the applicants in respect of offences under Sections 201 and 218 of the Indian Penal Code but the accused are not being asked to make any statements in those proceedings. They are summoned as witnesses in a proceeding in which other persons are being tried for the offence of murder. They do not stand in the character of accused persons when they appear as witnesses in Sessions Trial No. 14 of 1973. They cannot, therefore, decline to enter the witness-box on the ground that they are entitled to the protection against self-incrimination under Article 20 (3) of the Constitution.

18. Their contention that whatever statements they will make are likely to be used against them in the prosecution against them is also misconceived in view of the provisions of the proviso to Section 132 of the Evidence Act. That section provides:

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings upon the ground that the answer to such Question will criminate, or may tend directly or indirectly to criminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kinds.

Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answers." The evidence of these applicants is still to be recorded and obviously the prosecution which is pending against them cannot be said to be a prosecution for giving false evidence in the case against 44 accused. Whatever statements they are forced to make as witnesses in Sessions Trial No. 14 of 1973 cannot be proved against them in the trials in which they are being tried. If the contention of the applicants is accepted then there will hardly be any occasion for the provisions of Section 132 of the Evidence Act to come into play. In my view, there is no substance in the contention of the applicants that they are entitled to remain away from the witness-box and not appear as witnesses in response to the summonses issued by the Court on the erroneous assumption that the protection under Article 20 (3) of the Constitution of India enables them to do so. The order passed by the learned Additional Sessions Judge is, therefore, clearly accordingly to law and he shall now proceed with recording the evidence of these two witnesses. The applications are rejected.