

(1959) 09 MAD CK 0034

In the Madras High Court

Case No : Writ Petns. No's. 840 and 849 of 1958

Shankerlal

APPELLANT

Vs

Collector of Central Excise, Madras and Another

RESPONDENT

Date of Decision : 07-09-1959

Acts Referred:

Constitution of India, 1950 — Article 20(1), 20(2), 20(3)
Evidence Act, 1872 — Section 1, 119, 132
Foreign Exchange Regulation Act, 1973 — Section 23
Imports and Exports (Control) Act, 1947 — Section 3(2)
Penal Code, 1860 (IPC) — Section 120
Sea Customs Act, 1878 — Section 167(8), 171, 19

Citation : AIR 1960 Mad 225 : (1960) CriLJ 625 : (1960) ILR (Mad) 267 : (1960) 73 LW 24

Hon'ble Judges : Balakrishna Aiyar, J

Bench : Single Bench

Judgement

(1) The questions that arise for determination in both these petitions are the same and I shall therefore deal with them together.

(2) On 23-9-1958, the Collector of Central Excise, Madras seized 500 packets of 7 o" clock blades from No. 47, Narayana Mudali St., George

Town. Each packet contained 100 blades so that in all the total of number of blades seized was 50,000. On 29-9-1958 the Collector of Central

Excise sent a notice to Shankarlal, the petitioner in W. P. No. 840 of 1958, which runs as follows:

Whereas there is reason to believe that the goods mentioned in the schedule below have been imported without payment of customs duty and

import trade control licence in contravention of S. 19 of the Sea Customs Act read with S. 3(2) of the Imports and Export Control Act. 1947 and

you are liable to a penalty under S. 167(8) of the Sea customs Act.

2. You are therefore called upon to show cause before the undersigned at Madras within ten days from the date hereof why a penalty should not

be imposed upon you and why the said goods should not be confiscated under the aforesaid provisions of law.

3. All evidence documentary or otherwise in your possession be produced in support of your explanation within the period specified above failing

which the case will be decided ex parte.

4. You should state at the same time whether you desire to be heard in person or through your legal representative in your defence by the said

authority on receipt of your reply, if necessary, a time and date will be fixed and communicated to you.

Schedule

7 o'clock blades (made in England)--50,000 numbers.

On 3-10-1958 counsel for the petitioner wrote to the Collector of Central Excise stating that the goods had been seized far away from the border

and in circumstances which could not raise any presumption against him. He further mentioned that the onus was not on the petitioner to prove that

the goods had been imported without payment of duty. He also called upon the Collector of Central Excise to state the grounds of seizure

because, according to him, he was entitled to that information under S. 181 of the Sea Customs Act.

(3) On 6-10-1958 the Collector of Central Excise replied that the goods had been seized under the reasonable belief that the blades had been

smuggled from foreign territory without payment of duty. On 9-10-1958, counsel for the petitioner replied that the letter of the Collector did not

satisfy the requirements of S. 181 of the Sea Customs Act. On 10-10-1958, the Collector of Central Excise issued a summons under S. 171-A of

the Sea Customs Act to the petitioner which runs as follows:

Whereas there are grounds for investigations being made in connection with the seizure of 7 o'clock blades numbering 50, 000,

and whereas I consider your attendance before me necessary for producing documents of the following description in your possession or power.

Documentary evidence and your account books for the receipt of the goods, viz., 7 o'clock blades if any may also be produced.

Now, therefore in exercise of the powers vested in me by S. 171-A of the sea

Customs Act, 1878, I do hereby summon you to appear before me in the office of the Collector of Central Excise, No. 15 Harrington Road, Madras-31, on 15-10-1958, at 10 a. m. for the purposes herein mentioned.

You are warned that giving false evidence in the proceedings is an offence punishable under S. 193 of the said code.

The case of the petitioner is that the Collector has no right whatever to summon him under S. 171-A of the Sea Customs Act and he has therefore

come to this Court for the issue of an appropriate writ to quash these proceedings of the Collector.

(4) The facts in W. P. No. 849 of 1958 are similar. A quantity of 136400--7 o'clock blades was seized from No. 20 Narayana Mudali street.

The petitioner herein also wrote through counsel asking the collector to state the grounds on which the goods had been seized. On 1-10-1958, the

Collector issued a notice to the petitioner in terms similar to that in W. P. No. 840 of 1958. He also issued a summons under S. 171-A of the Sea

Customs Act, to the petitioner herein and the terms of the summons are in all material respects the same as in the earlier case. The relief which this

petitioner seeks is also the same as in his earlier writ petition.

(5) The principal contention taken on behalf of the petitioners in the form which it assumed during the arguments--is this. Article 20(3) of the

constitution provides that ""no person accused of any offence shall be compelled to be a witness against himself"". Neither the word ""accused"" nor

the word ""offence"" is defined in the constitution. However Art. 367 makes the General clauses act, 1897 applicable to the interpretation of the

Constitution and so we entitled to look into that Act to find out in what sense the words "accused" and "offence" are used in the Constitution. In

the General Clauses Act of 1897, the word ""accused"" is not defined. But, there is a definition of the word ""offence"" which runs as follows:

offence"" shall mean any act or omission made punishable by any law for the time being in force.""

This definition is wide enough to include punishments imposed by any authority properly constituted by the law. These authorities may be Excise

officers, Customs officer, Income Tax Officers, or in fact, anybody else. Officers of the Customs Department have been specifically empowered

by the Sea Customs Act to impose various penalties, including fines and confiscation of goods. The acts or omissions in respect of which they have been empowered to impose these penalties are therefore ""offences"". Section 167 of the Sea Customs Act opens with these words:

The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively"".

Since the statute itself calls the acts or omissions referred to therein offences, since they are made ""punishable"" and since the Customs Officer allege

that the petitioners have contravened the provisions of the Sea Customs Act, the petitioners are accused persons within the meaning of Art. 20(3)

of the constitution and they cannot be compelled to give evidence which may render them liable to any of the penalties laid down in the Sea

Customs Act.

(6) This apart, the allegations made against the petitioners in relation to the blades set out in the notices issued to them amount to an accusation that

they have contravened S. 3(2) of the Imports and Exports (Control) Act. Such a contravention is punishable under S. 5 of the same Act with

imprisonment for a term which may extend to one year, or with fine, or with both. The proceedings instituted against the petitioners may in the

normal course lead to their being placed on their trial for offences under this section. They are for that reason also accused persons. within the

meaning of Art. 20(3) of the Constitution.

(7) It may perhaps be said that there has been no formal accusation in the sense that a complaint has been laid against the petitioners before a

Magistrate. But that makes no material difference. In respect of contraventions of the sea Customs Act and the Imports and Exports (Control) Act

customs officers are competent to lay complaints before a Magistrate. The position of these officers is therefore analogous to that of police officers

before whom information relating to cognisable offence has been laid. Vide Ch. XVII of the Sea Customs act and in particular S. 187-A which

enacts that,

no Court shall take cognisance of any offence relating to smuggling of goods punishable under item 81 of the Schedule to S. 167 except upon

complaint in writing"" ,

made by the appropriate customs Officers. That being so, the Customs Officers cannot compel the petitioners to appear before them and give evidence.

(8) On the other side, the learned advocate General explained that the word "offence" and the word "accused" occurring in Art. 20(3) of the constitution are used only in relation to proceedings instituted against a person in what may be called criminal courts. This will be apparent if we read all the paragraphs in the Article together. Article 20(1) speaks of conviction for any offence and enjoins that no person shall be convicted of any offence except for violation of a law in force at the time that the act was committed. The use of the word "conviction" would be inappropriate except in relation to a criminal court. Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once. The field to which the word "prosecute" properly applies has always been well understood as limited to criminal cases. Article 20(3) involves a continuation of the same idea and has no application except in relation to criminal courts.

(9) The learned Advocate-General further explained that though all contraventions of the Sea Customs Act are called offences in the Act itself, they are nevertheless capable of being dealt with in two ways. The officers of the Customs department may themselves complete the enquiry and where they think proper confiscate the goods and also impose a penalty. It is also open to them to prosecute the persons concerned in a criminal court. Though the officers of the department are empowered to confiscate the goods involved in contraventions of the statute and also to impose a penalty on the persons concerned, nevertheless, it has been held that their proceedings are not criminal proceedings. Therefore, the persons whom the officers of the customs department proceed against and on whom they might ultimately decide to impose a penalty, or in respect of whom they may order confiscation of the goods, are not accused persons within the meaning of Art. 20(3) of the constitution.

(10) The distinction between an act which is punishable under what may be called the criminal law, properly so called, and, an act in respect of which the departmental authority may impose a penalty but which nonetheless is not regarded as an offence, is explained in *Sivagaminatha*

Moopanar and Sons Vs. Income Tax Officer, II Circle, Madurai and Another, . See pages 424 to 427 (of ILR Mad): (pages 4 and of AIR).

Rajagopala Aiyangar J. who delivered the judgment of the Bench quoted with approval the following passages from the decision of Brandeis J. of

the American Supreme Court.

Congress may impose both a criminal and a civil sanction in respect to the same act or omission: The remedial character of sanctions imposing

additions to a tax has been made clear by this Court in passing upon similar legislation. They are provided primarily as a safeguard for the

protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the tax-payer's

fraud".

He also quoted the following passages from the decision of Jackson J. also of the American Supreme Court in a later case:

The penalties imposed by Congress to enforce the tax laws embrace both civil and criminal sanctions. The former consist of additions to the tax

upon determination of fact made by an administrative agency and with no burden on the Government to prove its case beyond a reasonable doubt.

The latter consist of penal offences enforced by the criminal process in the familiar manner. Invocation of one does not exclude resort to the other.

This distinction applies also to proceedings taken by the Customs Officers under the Sea Customs Act. Vide *Maqbool Hussain Vs. The State of*

Bombay, of the judgment run as follows:

We are of the opinion that the Sea Customs authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or

penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose

of supporting a plea of double jeopardy.

It therefore follows that when the Customs authorities confiscated the gold in question neither the proceedings taken before the sea Customs

authorities constituted a prosecution of the appellant nor did the order of confiscation constitute a punishment inflicted by a court or judicial tribunal

on the appellant. The appellant could not be said by reason of these proceedings before the Sea Customs authorities to have been "prosecuted and

punished" for the same offence with which he was charged before the Chief

Presidency Magistrate, Bombay, in the complaint which was filed against him under S. 23 Foreign Exchange Regulation Act.

(11) To the same effect is the decision in *Thomas Dana Vs. The State of Punjab*, . It will be sufficient to quote the first two paragraphs of the head

note:

The proceedings before the Sea Customs authorities under S. 167(8) of the Sea Customs Act are not "prosecution" within the meaning of Art.

20(2) of the Constitution. Therefore the fact that in such proceedings the customs authorities have both confiscated the goods and also inflicted a

penalty on the person does not bring into operation the provisions of Art. 20(2) so as to prevent his prosecution and imprisonment under S.

167(81) of the Act read with S. 23 and S. 23-B Foreign Exchange Regulation Act and under S. 120-B Penal Code. In that view of the matter it is

unnecessary to consider whether the action taken by the customs authorities amounted to "punishment" and whether the "same offence" was

involved in the proceedings before the revenue authorities and the criminal court.

"Prosecution" means a proceeding either by way of indictment or information in the criminal courts in order to put an offender upon his trial. The

chief customs officer or any other officer lower in rank than him in customs department is not a court and that is made clear by the provisions of S.

187-A of the Sea Customs Act.

The petitioners not being accused persons are therefore bound to appear before the Collector of Central Excise and answer all the questions put to

them.

(12) At one stage of the arguments there was a suggestion that S. 132 of the Evidence Act would help to solve the problem. That section provides

that a witness shall not be excused from answering any question upon the ground that the answer to such question would incriminate him or expose

him to a penalty or forfeiture. But then there is a proviso which runs as follows:

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 proceeding, except a prosecution for giving false evidence by such answer.

It was thought that the petitioners could be compelled to give evidence but that

at the same time they could be protected from being prosecuted in a criminal court on the basis of the answers elicited from them by calling this proviso in aid. But further investigation shows that this solution is not directly available; because S. 1 of the Evidence Act makes it plain that it applies only to judicial proceedings in or before any court and proceedings before the Sea Customs Officers are not judicial proceedings. Nor do such officers constitute courts.

(13) It is now necessary to examine some of the other decisions cited before me. Of them and a very important one is M.P. Sharma and Others

Vs. Satish Chandra, District Magistrate, Delhi and Others, . I had occasion to study this case in connection with W. P. Nos. 291 and 292 of

1957, and there summarised the facts of that case and quoted the relevant passages from the judgment which I reproduce below:

The material facts there were as follows: The Registrar of Joint Stock Companies lodged information with the Inspector General of Police, Special

Police, Establishment, New Delhi, to the effect that offences under Sections 406, 408, 409, 418, 420, 465, 467, 468, 471 and 477(a) Penal

Code had been committed in connection with the affairs of Dalmia Jain Airways Ltd. The Registrar of Joint Stock Companies also stated that to

determine the extent of the fraud it was necessary to seize the books not only of Dalmia Jain Airways Ltd. but also of various other allied concerns

a list of which he furnished. On the basis of this information an application was made to the District Magistrate, New Delhi for the issue of search

warrants under S. 96 CrI. P. C. Permission to investigate the non-cognisable offences mentioned in the report was also asked for. On the same

day the District Magistrate ordered investigation and also issued search warrants. The persons concerned then went to the Supreme Court and

applied for a writ to quash the search warrants and for the return of the documents that had been seized in execution of the search warrants that

had been issued. The petitioners raised two contentions before the Supreme Court, viz.,

"that the fundamental rights of the petitioners under Art. 20(3) and Art. 19(1)(f) have been violated by the searches in question."

(14) After disposing of the objections based on Art. 19(1)(f) the Court proceeded to examine the arguments based on Art. 20(3). The arguments

are thus summarised in the judgment:

The fundamental guarantee in Art. 20(3) comprehends within its scope not merely oral testimony given by an accused in a criminal case pending

against him, but also evidence of whatever character compelled out of a person who is or is likely to become incriminated thereby as an accused.

It, therefore, extends not only to compelled production of documents by an accused from his possession, but also to such compelled production of

oral or documentary evidence from any other who may become incriminated, thereby as an accused in future proceedings.

Jagannadhadas J. who delivered the judgment of the Court observed:

Thus so far as the Indian law is concerned it may be taken that the protection against self-incrimination continues more or less as in the English

common law, so far as the accused and production of documents are concerned, but that it had been modified as regards oral testimony of

witnesses, by introducing compulsion and providing immunity from prosecution on the basis of such compelled evidence Broadly stated

the guarantee in Art. 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial

for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal

import..... A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible

gestures as in the case of a dumb witness (see S. 119 Evidence Act) or the like, "to be a witness" is nothing more than "to furnish evidence" and

such evidence can be furnished through the lips or by production of a thing or of a document or in other modes..... Indeed, every

positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional

evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the

protection in respect of the evidence so procured is confined to what transpires at the trial in the Court room. The phrase used in Art. 20(3) is "to

be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a

witness" is not merely in respect of testimonial compulsion in the Court room but

may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution..... Considered in this light, the guarantee under Art. 20(3) would be available in the present cases to these petitioners against whom a first information report has been recorded as accused therein. It would extend to any compulsory process for "production" of evidentiary documents which are reasonably likely to support a prosecution against them.

(15) This decision makes it clear that the protection or immunity conferred by Art. 20(3) commences not merely from the point of time when a person accused of an offence is before the Court; it extends to a point of time further back. A person against whom a first information report has been laid before the police on which they are competent to act would be an accused person and he cannot be compelled to produce any document. It will be noticed that the Supreme Court did not accept the extreme contention which had been put forward by counsel for the petitioners and which I quoted a little earlier viz., that Art. 20(3) comprehends and prohibits the use of evidence "compelled out of a person who..... is likely to be incriminated thereby as an accused."

(16) The next case that needs to be referred to is Calcutta Motor and Cycle Co. Vs. Collector of Customs and Others, . The petitioner in that case was a firm registered under the Indian Partnership Act, and carrying on business in Calcutta. The customs authorities had information that the firm had been importing goods without valid licences and had been contravening the provisions of the Sea Customs Act in various other ways. They applied for and obtained search warrants from the Chief Presidency Magistrate, Calcutta, and searched various premises and seized several properties. Thereafter the Customs authorities issued a notice dated 19-5-1955 to one Jajodia, a partner of the petitioner firm, requiring him to produce various files. On 20-5-1955, another notice was issued by the Chief Inspector, Customs House, Calcutta, calling upon the partners of the firm to appear before him on 21-5-1955. On 23-5-1955, a third notice was issued by another officer of the Customs department requiring the petitioner firm to produce certain other documents. Sinha J. who first heard the

case, issued a writ of mandamus directing the customs authority to forbear from giving effect to these three notices. On appeal this order was set aside. The learned Chief Justice who delivered the judgment of the Bench in Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others, , remarked:

But in any event, all status must yield to the constitution and therefore it will be correct to hold that S. 171-A, as such, is not bad, but the person summoned under its provisions will necessarily be entitled to claim the Constitutional privileges as soon as he is asked to answer a question or produce a document which he cannot answer or produce without incriminating himself, if he has previously been accused of an offence..... In my view, full effect can be given to the constitutional guarantee without holding any part of the section to be void. The protection to which the respondents are entitled under Art. 20(3), is a protection against self-incrimination and not protection against anything else. So long as they are not compelled to answer a question by answering which they may incriminate themselves, or compelled to produce incriminating document, they cannot complain that they have been asked to appear before the customs authorities or to produce documents.

In other words, the petitioners were required to appear but they were not required to answer all the questions that might be put to them.

The Court finally allowed the appeal in these terms:

For the reasons given above the appeal is allowed and the order of the learned Judge quashing the orders contained in the notices dated respectively, the 19th May, 20th and 23rd May, 1955, and the order for a writ of mandamus, directing the appellants to forbear from giving effect to them is set aside, subject to the reservation as to the right of the respondents to claim the constitutional immunity if and when they think they are going to be subjected to self-incrimination, as I have explained above.

(17) Learned counsel for the petitioner referred to Counselman v. Hitchcock, (1892) 35 Law Ed. 1110, a decision of the Supreme Court of the United States, where it was held:

the privilege given by the Fifth Amendment to the Constitution that no person shall be compelled in any criminal cases to be a witness against himself extends to a proceeding before a grand jury.

(18) By way of analogy it was suggested that the protection will also extend to any investigation conducted by the officers of the Sea Customs

department in our country.

(19) I do not think that the analogy really helps because the position of the grand jury is entirely different from that of the officers of the Sea

Customs department. If the grand jury adopted a certain view the prosecution of the person concerned would follow as a matter of routine.

Therefore, a person being interrogated by the grand jury is really in the position of an accused person. But that is not so in the case of persons

whom the officers of the customs department seek to interrogate.

(20) The same observation would apply to the case reported in *Hoffman v. United States*, (1951) 95 Law Ed. 1118.

(21) In *McCarthy v. Arndstein*, (1924) 69 Law Ed 158, it was held that the constitutional protection of a witness against self-incrimination applies

in civil proceedings also. This makes it clear that the scope of the protection which a witness enjoys against a self-incrimination is not quite the

same under our Constitution as under the American Constitution. In fact, Art. 20(3), as explained, is available only in relation to a proceeding in a

criminal court and therefore, the field of protection in India would appear to be narrower than in United States of America.

(22) In a matter of this kind, we must evolve a workable compromise and effect an adjustment between two lines of thought and two conflicting

interests. On the one hand, we must resolutely set our face against the methods and techniques evolved by the Star-Chamber-methods which

would rapidly enable a police state to be built up. On the other hand, society must be protected, and, this can be done only by tracking down

offenders and punishing them, according to law. This cannot be done if persons likely to have relevant information cannot be questioned and

compelled to answer. To carry immunity from being questioned beyond a certain limit would be to make the country safe for lawless elements. This

is the matter in its broad aspects.

(23) Except in those cases where the identity of the offender is at once known various processes occur between the stage when an offence is

committed and the stage when the offender is placed before a criminal court, to be dealt with according to law. The residents of the locality where

the crime has been committed, or those who are believed or alleged to have been in the vicinity of the scene when it was committed, may have to be examined. At this stage no one is an accused person in any sense of the term. The circle of enquiry would in time become smaller and the stage would be reached when there is a certain amount of suspicion against various persons. Even now it would be correct to say that there is no accused person. Then the final stage is reached when the investigating authority considers that a particular person has committed the offence and decides to proceed against him in a criminal court. It is at this last stage that a person really becomes accused of the offence.

(24) I asked the learned Advocate-General whether in either of these two cases the authorities of the customs department had made up their minds to prosecute the petitioners in a criminal court, and, I understood him to say that they have yet to ascertain the facts and so were not in a position to make up their minds to prosecute or not.

(25) It was then replied that by this simple device of pretending that they have not made up their minds and that therefore the petitioners have not become accused persons they could be compelled to answer questions put to them, him, and, that these answers might be used later on to secure their conviction.

(26) In respect of this apprehension it may be sufficient to point out that the law is not so helpless that it can be defeated by pretences of the kind which it is alleged the department may resort to. If the stage is reached when a person can be properly said to be an accused person, and, thereafter he is compelled to answer questions, and, the material obtained thereby sought to be used against him, Art. 20(3) of the Constitution would come into play and the Court can--apart from all statutory provisions--refuse to look at the material obtained by contravening the Constitution. That would be a case where, if there were no special statutory authority in that behalf, Courts would be entitled to fall back upon their inherent power to prevent an abuse of the process of the law. This will involve nothing more than a logical extension of the principle embodied in S. 132 of the Evidence Act.

(27) The position may be thus summarised. (1) When they conduct proceedings which may terminate in the confiscation of goods or the imposition

of penalties which they can themselves impose, without reference to any criminal court, Customs Officers are not acting as courts of law and the

proceedings before them are not judicial proceedings--except for the limited purposes of Ss. 193 and 228, Penal code. (2) To the persons

examined in such proceedings S. 132 of the Evidence Act would not apply of its own force. (3) But as they are empowered to prosecute for

contraventions of the Sea Customs Act the position of Customs Officers will in certain respects be analogous to that of police officers acting on

information relating to a cognisable offence. (4) A person who has been examined by the Customs Officers will not be in the position of an accused

till it can be fairly and properly said that he is likely to be proceeded against in a criminal court. (5) Though the question when a person becomes an

accused person would depend on the decision that the departmental officers may take, they cannot, by merely pretending that they have not made

up their minds, circumvent the provisions of Art. 20(3). (6) Whether a witness or a suspect has become an accused person in any particular

instance is substantially a question of fact.

(28) It is impossible to say that in this case the position of the petitioners at present is that of persons accused of any offence. They have not been

charged with any criminal offence, either formally or informally. No proceedings under the criminal law have been instituted against them. The

notices issued to them no doubt allege that there is a reason to believe that the goods mentioned in the schedule attached to the notice have been

imported without payment of customs duty. But then, the notices make it plain that the liability sought to be imposed upon the petitioners is only

under S. 167(8) of the Sea Customs Act. That provides only for the imposition of departmental penalties. As the petitioners are therefore not

persons accused of any offence they are bound to appear in obedience to the summons issued to them and answer questions that may be put to

them.

If they are asked questions the answers to which are likely to incriminate them, it will be open to them to claim the protection provided by Art.

20(3) of the Constitution. If that claim is overruled and are compelled to answer those questions, then such answers will not be admissible in

evidence against them should they be at a later stage prosecuted in a criminal

court. That will be one way of implementing the protection conferred by Art. 20(3). But it will be open to the department to take into account any answer that may be given for the purpose of determining what departmental penalties, if any, should be imposed upon the petitioners. It is very desirable that the departmental officers, in their turn should make it plain to the petitioners at the earliest moment they can do so whether it is intended to proceed against them in criminal court or not.

If it is made plain to the petitioners that there is no intention to proceed against them in a criminal court, then no question of invoking the shield of Art. 20(3) could possibly arise, and, the petitioners will be bound to answer all the questions put to them, and, those answers, as I said before, can be taken into account for imposing departmental penalties. But, if it is intended to prosecute the petitioners in a criminal court they cannot be compelled to answer any question the answer to which is likely to incriminate them. If, nevertheless they are forced to answer such questions the answers so obtained cannot be used in evidence against them at their trial.

(29) All these having been made clear these petitions are dismissed with costs. Advocate's fee Rs. 250, one set.