

Confusion Over Confessions: Admissibility of Confessions Under the Customs Act and the Prevention of Money Laundering Act

Chaitanya Gupta*

Abstract

This article delves into the admissibility of confessions in the context of the Customs Act, 1962, and the Prevention of Money Laundering Act, 2002 (PMLA) within the framework of the Indian Evidence Act, 1872 (IEA). The discussion begins by establishing the significance of analysing confessions in economic offences. Such offences cause substantial societal harm. The article also highlights the legislative and judicial justifications for lowering the threshold of admissibility for confessions under the Customs Act and PMLA, which are departures from the IEA. The IEA is also outlined, since Sections 24 to 29 govern the admissibility of confessions. The analysis then shifts to the admissibility of confessions under the Customs Act. It emphasises how post-Independence interpretations narrow the definition of “police officers” under Section 25 IEA, making Customs Officers distinct and allowing for the admissibility of confessions made before them. However, Section 24 IEA still applies to prevent confessions obtained through inducement, threat, or promise. The article examines confessions under PMLA (Prevention of Money Laundering Act), highlighting the unique role of the Enforcement Directorate (ED). It discusses the broad powers granted to the ED under Section 50 PMLA and how they differ from typical police officers. Confessions obtained by the ED are considered admissible because the accused is not treated as such under Sections 24 to 25 IEA. The article also briefly touches upon the constitutionality of PMLA confessions in relation to Article 20(3) of the Constitution, asserting that these confessions must still be subject to cross-examination. Thus, the article raises concerns about the exceptional treatment of economic offenses and argues against derogating from fundamental principles of justice and evidence in the name of combating economic crimes. It calls for a balanced approach that respects the rights of the accused while addressing the seriousness of economic offenses.

Keywords: Confession, Indian evidence act, admissibility, and police officer

*Author for Correspondence

Chaitanya Gupta

E-mail: 20jgls-cgupta1@jgu.edu.in

Student, Department of Law, O.P. Jindal Global University,
Sonapat, Haryana, India

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INTRODUCTION

The aim of this article is to analyse the admissibility of confessions under the Customs Act, 1962 [1] and the Prevention of Money Laundering Act, 2002 [2] (PMLA). To that end, the admissibility of confessions under the Indian Evidence Act, 1872 [3] (IEA) will be outlined. From there, it will be analysed where the departure from the IEA occurs in these statutes concerning economic offences.

This article focuses on economic offences because Courts have considered these offences as

very severe in nature, that is, one that involve deep-rooted conspiracies, cause great loss to the public, and are detrimental to the economy [4]. Furthermore, India has seen an increase in economic offences over the past decade [5]. Even if the number of offences concerning smuggling, custom-duty, and money laundering may have fallen during 2012–2015, the total losses incurred have increased [6]. A *fortiori*, a 19% increase in economic offences prompts an enquiry into the investigative and trial processes targeted at them [7].

In fact, the Supreme Court has held the following, “*it is well-settled that socio-economic offences constitute a class apart and need to be visited with a different approach . . . usually, a socioeconomic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm that needs to be considered seriously* [8].” This view has found resonance in *Mohanlal Porwal* [9] and *P. Chidambaran* [10].

Owing to the unique nature of these offences, and their increased incidence, the need to have a harsher investigative and trial process becomes evident. The legislature and judiciary have used this justification to lower the threshold of admissibility of confessional statements under PMLA and CA, by differentiating between the investigating agency and its purpose; the status of the person making the statement; and the stage of the investigation at which evidences and statements are collected. These departures from IEA will be analysed below, while briefly considering the balance between the constitutional right against self-incrimination and the admission of these extra-judicial confessions.

CONFESSIONS UNDER THE INDIAN EVIDENCE ACT

As per the IEA, confessions constitute a species under the genus of admissions under Sections 17 to 31 [11]. Admissions and confessions deal with statements that act as evidence against the person making them, unless some law bars their admissibility. With respect to confessions, Sections 24 to 26 restrict the admissibility of confessions as evidence, [12] whereas Sections 27 to 29 provide for exceptions when confessions in whole or part could be considered admissible in Court [13].

For the purpose of this article, the interplay between Section 24 to 27 is the most relevant. Section 24 excludes confessions made under threat, promises or inducements; Section 25 makes confessions made by the accused to a police officer inadmissible; Section 26 makes confessions made by person in police custody, not in the presence of a Judicial Magistrate (JM), inadmissible; and Section 27 allows for the presumption that a confession is true if it leads to the discovery of a fact [14].

Confession

The word “confession” has not been defined in IEA, but its understanding has developed through case-law. Confessions are admissions made by a person charged with a crime, stating or implying that they have committed said crime [15]. A confession may not necessarily admit the commission of crime, but may also include facts constituting an offence [16]. Neither, a statement suggesting that the accused committed the crime, [17] nor does the mere admission of a gravely incriminating fact, [18] constitute a confession. On the other hand, a confession cannot contain any self-exculpatory matter either [19].

Since confessions are the best/most effectual form of evidence, [20] the Courts have to begin with the presumption that extra-judicial confessions do not constitute weak evidence [21]. Here, a Court must determine whether the confession was *voluntary* and *true* [22]. If it is discovered that a confession was improperly induced from the accused, the Court has to disregard the same, or treat it as weak evidence, irrespective of its veracity [23].

Confessions by an Accused

A valid confession can only be elicited from an accused person. An “accused person” is one against whom evidence has been brought during a criminal proceeding, implying that they have been accused of any offence [24]. Here, a suspect whose statement is recorded, and is subsequently made an accused would also constitute confession by an accused [25]. This is because while making such a statement the person may accuse themselves of committing an offence.

Police officer or ‘Person in Authority’

Section 24 IEA contemplates confessions made to a “person in authority,” for which the test is that such a person has the authority to interfere in the enquiry of the offence [26]. Thus, Section 24 makes a confession made to a “person in authority” inadmissible. The Courts have broadened the understanding of “person in authority” to include a lawyer engaged in investigation, [27] a police officer with the powers of a Magistrate [28], and so on.

However, under Section 25 with respect to the definition of a police officer (to whom a confession if made, is inadmissible), the Court stipulates that a police officer has a broader understanding than its colloquial meaning [29]. Accordingly, a *chowkidar* [30], excise peons [31], and excise officers [32] have been considered as police officers under Section 25. Even here, using examples of Customs Officers and the Railway Protection Force, the SC has carved a further distinction that officers empowered to conduct investigations like the police, but not permitted to frame a chargesheet under Section 173 Code of Criminal Procedure [33] (CrPC), are not police officers [34]. Hence, confessions recorded by officers not analogous to the police are considered valid confessions and not barred by Section 25 IEA.

Admissibility of Confessions

Sections 24 to 26 make confessions inadmissible. The principle behind inadmissibility under Section 25 is that confessions made to a police officer would be untrustworthy and may be false [35]. Section 26 validates confessions made to a police officer in the presence of a Judicial Magistrate. The presence of a Judicial Magistrate helps in ensuring the free and voluntary nature of a confession, [36] and deters extra-judicial confessions [37].

Here, Section 27 acts as a proviso to Sections 24 to 26 [38]. If Sections 24 to 26 exclude the whole or part of a confession, S.27 can aid in lifting this ban, by admitting that part of the confession that leads to the discovery of a fact in consequence of the information [39]. Here, the admissibility of a confession will not be hit Article 20(3) of the Constitution [40] since the accused was not compelled to be a witness against himself, which is ensured by Sections 24 to 26 [41]. Last, while, Section 162 CrPC deems statements made to the police as inadmissible, Section 27 IEA can rescue such a statement and recovery from the mark of inadmissibility if the impugned statement is followed by the discovery of facts corroborating it [42]. The seminal *Deoman Upadhyaya* case resonates with this opinion [43]. Hence, confessions in Indian Courts are admissible as per Section 27 IEA insofar as they are not prohibited by Section 162 CrPC [44], Sections 24 to 26 IEA, and Article 20(3) of the Constitution.

CONFESSIONS AND CUSTOMS ACT

In the above analysis, pre-Independence Courts in India had expanded the interpretation of a ‘police-officer’ under Section 25 IEA, to include *chowkidars*, *patels*, village headmen, and so forth, however, post-Independence, the Apex Court has chosen to interpret ‘police-officers’ narrowly. This distinction becomes important *qua* the admissibility of confessions made before a customs officer. In this regard, the SC held that to determine who is a police officer, it is important to see whether the powers exercised by him directly relate to the prohibition enacted by Section 25 vis-à-vis the recording of a confession [45]. Thus, Indian jurisprudence on Customs Officers being equated with police officers for the purposes of Section 25 IEA, resoundingly state that the two are distinct, and Customs Officers cannot be considered as police officers.

In *Barkat Ram*, the SC held that a “police officer” has a narrow meaning, and that a Customs Officer does not work towards the detection and prevention of crimes committed, but concern themselves with the detection of smuggling and ensuring the recovery of custom-duties [46]. Since their focus is more on custom-duty than the offender, they are not police officers under Section 25 IEA, irrespective of the powers of investigation and evidence collection provided under Section 108 CA [47].

This was reaffirmed in *Ramesh Chandra* [48] and *C. Fernandez* [49], where the Court opined that even though a Customs Officer by virtue of Section 108 of the Customs Act possesses similar powers of investigation as a police officer, a Customs Officer cannot be considered a police-officer since they cannot file a report/charge-sheet under Section 173 CrPC [50]. Additionally, the person being summoned by a Customs Officer by the exercise of their Section 108 of the Customs Act powers is not an accused under Section 24 IEA [51]. Since a confession made by an “accused” is an essential under Section 24, confessions made to Customs Officers are admissible.

This distinction between custom officers and police officers is of importance since the latter cannot record admissible confessions, because of Section 25 IEA. Therefore, the custom officers not being considered as police officers allows them to record admissible confessions. Nevertheless, this distinction does not affect the bar to admissibility under Section 24 IEA qua inducement, threat or promise, since the right against forceful self-incrimination [52] is paramount. Thus, an officer who cannot file a charge-sheet/final report could only record an admissible confession.

THE PREVENTION OF MONEY LAUNDERING ACT

As opposed to the above two statutes, the investigative process under PMLA offences—money laundering—are carried out by the Enforcement Directorate (ED). Section 50 PMLA empowers the authorities—ED—to summon persons and documents, and to collect evidence [53]. This provision is an amalgamation of Sections 90, 160, and 161 CrPC [54], with some modifications. The similarity rests with respect to the ED’s power to summon witnesses and documents, and record statements. Two primary departures from the CrPC occur in PMLA because Section 50 uses the word “evidence” and considers proceedings before the investigating officer as judicial proceedings.

The ED’s power under Section 50 PMLA materialises in the form of wide-ranging powers, whereby it can call upon any person to record statements and this person is obligated to give true/correct information. This implies that the person summoned will have to get their statements recorded on oath, making them open to liability as under Sections 191, 193, 197, and 228 of the Indian Penal Code [55]. These offences encapsulate the offence of perjury, and include making intentionally false statements, signing false certificates, insulting a public servant sitting in a judicial proceeding, and improving one’s testimony over a trial [56].

Confessions under PMLA

Confessions and other statements recorded under Section 50 PMLA have been considered admissible in Court in *Rohit Tandon* [57]. The rationale for accepting such extra-judicial confessions, however, could be found in the Court’s analysis in *Y.S. Jagan Mohan Reddy* [58]. Accordingly, money laundering and other economic offences are very complex in nature and involve deep-rooted conspiracies, resulting in an extraordinary loss to the public exchequer and national economy, and hence require the investigating agency to be clothed with more/extraordinary powers to deal with the recovery of money [59].

The SC explains the admissibility of such confessional statements by deciding that the persons from whom such a confessional statement is taken is not an accused per Sections 24 to 25 IEA [60]. This is because the ED under Section 50 PMLA are not police-officers as they do not have the power to register a First Information Report (FIR) against the person appearing in response to the Section 50 PMLA summons.

This was reaffirmed in *Vijay Madanlal Choudhury*, where the SC held that the investigating officers under PMLA do not come under the definition of police officers, and the investigation procedure espoused in Section 50 PMLA is *stricto sensu* not an investigation that would result in the initiation of prosecution [61]. It also held that the Enforcement Case Information Report (ECIR) prepared by the ED is not an FIR [62]. Here, the Court also deemed PMLA to be a *sui generis* amalgam of penal and

adjudicatory mechanisms to confiscate the proceeds generated from the offence, and not a pure penal law [63]. Consequently, PMLA is exempt from the normal standards of criminal procedure [64]. Hence, it is evident that if the ED under PMLA summons a person and subsequently records a confessional statement, it would not be hit by the inadmissibility envisioned under Sections 24 to 26 IEA.

Constitutionality of PMLA Confessions

While the above discussion raises a concern whether the investigative process outlined in Section 50 PMLA is *ultra vires* of Article 20(3) of the Constitution, which espouses the right against self-incrimination, the Court attempted to resolve the same in *Ripen Kumar*, in the context of the Customs Act, by holding that such confessional statements would not formulate the sole basis of a conviction, irrespective of the gravity of the economic offence [65]. It was of the opinion that such extra-judicial confessions, much like any other statement should be subject to cross-examination. Furthermore, the gravity of the offence would not be an excuse to avoid the principles of natural justice and fundamental rights. Therefore, *Ripen Kumar* along with *Vijay Madanlal Choudhury* provide for a framework to deem extra-judicial confessions recorded under Section 50 PMLA *intra vires* of Article 20(3).

CONCLUSION

As mentioned previously, the SC considers economic offences as very serious, and allows for a different evidentiary standard for such offences. While such an exceptional treatment may not be of severe consequence in offences under the Customs Act because the primary object of Customs Officers is the recovery of the smuggled goods or custom-duty; in the case of PMLA, such an exceptional standard may lead to draconian consequences.

The vague interpretation of the ED's powers under PMLA allows them the ability to have the powers of judge, prosecution or police, at any stage they desire. In that, they can compel the witness to testify like a regular court. At this stage, irrespective of whether the ED is akin to the police, or has kept the accused in custody, a confession elicited by them, although permissible under Section 50 PMLA, would get hit by Article 20(3) and Section 24 IEA. According to the latter, a person cannot be compelled by a person in authority to confess. Therefore, it does not matter whether the investigating agency is the ED or police.

The right against self-incrimination is encapsulated in Article 20(3) and is premised on the Latin maxim, "*nemo tenetur prodere accusare seipsum*" [66]. The SC has upheld the same by stating, "*that we cannot force or compel the person who is accused of an offence to provide or speak a statement which is against himself . . . it is important to protect such person because a person is innocent unless proved guilty*" Under PMLA, ED has effective powers to compel the accused to answer their questions, even at the risk of self-incrimination.

Such a design runs contrary to the rules of natural justice, fundamental rights of Indians, and the basic principles of evidence and criminal procedure. Regardless of how serious economic offences are, such derogation ought not be permitted, especially since such an exception was not permitted under the Narcotic Drugs and Psychotropic Substances Act [67]. In these serious and ever-increasing offences, the Courts understood the definition of police widely to deem these extra-judicial confessions inadmissible, thereby protecting the rights of the accused under Article 20(3) and Sections 24 to 25 IEA [68].

Thus, the derogation of the above principles by virtue of the PMLA and Customs Act ought not to be permitted by Courts by their acceptance of extra-judicial confessions elicited by the investigating agencies. Such an acceptance will pave the way for an autocratic state.

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