Hira H. Advani etc.

Vs

State of Maharashtra

Criminal Appeals Nos. 85-90 of 1968

(S. M. Sikri, G. K. Mitter, K. S. Hegde JJ)

13.08.1969

JUDGMENT

MITTER, J. -

1. This group of appeals - by a certificate under Article 134(1)(c) of the Constitution of India granted by the High Court of Bombay disposing of Criminal Appeals Nos. 497 to 500 and 516 of 1965 upholding substantially the conviction and sentences passed against the appellants by the Presidency Magistrate, 2nd Court, Mazgaon, Greater Bombay.

2. The appellants before us and the others were prosecuted by the Assistant Collector of Bombay for offences of conspiracy and substantive offences punishable under Section 167(81) of the Sea Customs Act and Section 5 of the Imports and Exports (Control) Act, 1947. The gist of the complaint was that all the accused knowingly and with intent to defraud the Government of India of duty payable thereon and/or to evade the prohibitions and restrictions for the time being in force under or by virtue of the Sea Customs Act with respect thereto viz., Section 3(2) of the Imports and Exports (Control) Act, 1947 entered into a conspiracy in Bombay and other places during the period commencing from August, 1958 and August, 1959 to acquire possession and to be concerned in carrying, removing, concealing and otherwise dealing with prohibited and restricted goods in very large quantities of the C.I.F. value of not less than Rs. 1,45,328/- and in relation to the said contraband goods to be knowingly concerned in fraudulent evasion of or attempt at evasion of the duty chargeable thereon and of the prohibition and restriction as aforesaid applicable to the said goods and thus committed offences under Section 120-B of the Indian Penal Code read with Section 167(81) of the Sea Customs Act as amended and Section 120-B of the Indian Penal Code read with Section 5 of the Imports and Exports (Control) Act, 1947.

3. After recording the evidence of a large number of witnesses, charges were framed against all the accused by the Magistrate in December, 1962. The second and the third charge related to consignments brought into India by S. S. Canton and S. S. Star Arcturus respectively. The fourth and fifth charges related to consignments of S. S. Nissan Maru. The sixth charge related to S. S. Hikone Maru; the seventh charge related to S. S. Obra; the eighth charge to S. S. Nagara Maru and the ninth to S. S. Wakasima Maru. Accused No. 6 was not before the court as he was absconding and accused No. 7 was acquitted of all the charges. The Magistrate by his judgment dated February 25, 1965 convicted all the appellants of the main charge and each of the accused excepting accused No. 7 of diverse charges under the main heading of charges 2, 3, 4 and 5 respectively. Sentences of imprisonment and fine were imposed on all the accused. Excepting for setting aside the conviction in respect of some of the charges which it is not material to state, the High Court of Bombay in appeal upheld the conviction and sentences passed against all the accused.

4. The particulars of the different accused according to the prosecution were as follows : The first accused, appellant in Appeal No. 86 of 1968, acted as manager of a concern carrying on business in the name of Messrs. H. B. Advani Brothers at 251, Hornby Road, Bombay. He had proprietary and financial interest in the business and was at the material time in sole charge of that business. The second accused Moti H. Advani, appellant in Appeal No. 87 of 1968, was a brother of accused No. 1 and carried on business in the name of Messrs Indo Far East Traders. His business premises were at 2, Waterloo Mansion, Colaba, Bombay. Accused No. 3, Magharaj Gopaldas Jham, appellant in appeal No. 88 of 1968 carried on business in the name of Fine Art Traders along with his partner, accused No. 5 Arjan Ghanshyamdas Tejwani, appellant in Appeal No. 90 of 1968. The business premises of Fine Art Traders was at 250, Carnac Road, Bombay. Accused No. 5 had also a family concern in the name of Fine Art Museum carried on at the same place. Kishanchand Assandas Megnani, accused No. 4 appellant in appeal No. 89 of 1968 was at the material time working with the clearing agents M/s Tarasingh and Sons and held a dock permit. Accused No. 6 Bhagwant D. Advani who had several aliases was a cousin of the first and second accused and carried on business at the material time at Hong Kong in various names and styles. Accused No. 7 Namchand Thanwardas Ramchandani was the proprietor of a concern named Miller & Miller carrying on business in Bombay.

5. The prosecution case was that although the first and the second accused as shown above were purporting to carry on business separately they were in fact carrying on business together, accused No. 1 being the brain behind the business conducted in the name of H. B. Advani Brothers and/or Indo Far East Traders while accused No. 2 helped him substantially in his business. The first, second and sixth accused were said to have hatched a conspiracy to import prohibited goods from Hong Kong to Bombay by evading the provisions of law and payment of import duty. In this they took advantage of the practice of the customs officers at Bombay at that time who passed examination order in respect of alternate cases imported and the choice as to which of the two indicated in the examination order should be actually opened for examination was left to the importer or his representative. The conspiracy according to the prosecution case was to take advantage of this practice by sending genuine goods in the middle case where the consignment was of three cases and importing contraband goods in the remaining two. Where the consignment consisted of only two cases the importer or his representative present at the time of getting the examination order or at the time of actual examination of the cases by the customs officers used to manoeuvre to get only the case containing the genuine goods examined and take delivery of the consignment containing contraband goods without actual examination. In some instances where the consignment consisted of only two cases they bore different marks "M I M" and "M T M" it being shown to the conspirators as to which mark indicated the contraband goods. Further, the conspirators were said to have taken advantage of the trafficking in licences by purchasing the benefit thereof from the holders and importing contraband goods and some genuine goods on those licences in the names of those licence holders and successfully manoeuvring to clear the same on arrival of the consignments in Bombay with the help of the relevant documents retired from the bank or with the documents directly received from the exporter. In all this it was necessary to have the help of a person of their confidence to clear the goods and the services of accused No. 4 who was experienced in clearing work and held a dock permit were availed of. This was done by the fourth accused getting Sunderdas Tarasingh, the proprietor of Tarasingh and Sons to lend only the name of his concern by accepting a small remuneration for preparing the relevant bills of entry and leaving the actual work of clearing the goods to accused No. 4 who applied for and obtained a dock permit as an employee of Tarasingh and Sons in May, 1959.

6. Further, according to the prosecution, accused 3 and 5 had some business connection with

accused 1 and 2 and had joined the conspiracy a little later. These two accused used to get clearing work done through one Dalal, "Raut and Sons" where P. W. Kambli was working as a clerk. The services of Kambli who was an experienced clerk were availed of to help accused 4 in clearing all the consignments in which the conspirators were interested. Accused 3 had gone to Hong Kong on or about 10th June 1959 and returned to Bombay a month later. The prosecution alleged that the object of the visit was to import contraband goods with the help of accused 6.

7. Pursuant to the above conspiracy, various consignments were alleged to have been despatched from Hong Kong, the destiny being Bombay in all cases. Two cases were sent on S. S. Canton on the import licence held by Indo Far East Traders (accused No. 2). The ship sailed on 6-7-1959 and reached Bombay on 19-7-1959. Case No. 1 contained genuine goods while case No. 2 contained contraband goods. This consignment was the subject matter of charge No. 2. A consignment of three cases by S. S. Star Arcturus leaving Hong Kong, on 20-6-1959 reached Bombay on 9th July 1959. The consignment was covered by the import licence of Aarkay Saree Museum. On this the middle case No. 21 contained genuine goods while the other two contained contraband. Accused 2 is alleged to have purchased the benefit of the licence from Aarkay Saree Museum on July 4, 1959. This consignment was the subject-matter of charge No. 3. The consignments each containing three cases were sent by S. S. Nissan Maru on 24th June, 1959 on the import licence of (i) Laxminarayan Mahavirprasad and (ii) Continental Exports Corporation Ltd. In both the consignments the middle case contained genuine goods while the other two contained contraband goods. The ship reached Bombay on 23rd July, 1959. Laxminarayan Mahavirprasad disclaimed any connection with the consignment. According to the prosecution, accused 3 and 5 had purchased the benefit of import licence of Continental Exports Corporation for which payment was made through accused 5 on 9th July, 1959. This formed the subject-matter of charges 4 and 5. It is not necessary to take any note of the charges on which there was no conviction.

8. Investigation started consequent on information received by the customs officers at Bombay. The business premises of H. B. Advani Brothers was searched on 21st July, 1959 when accused 1 was personally present there. He claimed to be only the manager of the firm. There is no dispute that as a result of the search a number of documents and things were seized from a drawer of the table in the room searched or recovered from a wallet in his possession. These were serially marked as Exs. B, B-1, C, C-1, C-2, C-3, D, E, E-1, F, F-1, F-2 and the last three being recovered from the said wallet. According to accused No. 1 the exhibits other than the last three were recovered from the office premises of H. B. Advani Brothers but not from the table belonging exclusively to him. There is a concurrent finding of fact by two courts on this point against accused No. 1 but it is challenged before us. Ex. B was the envelope addressed to H. B. Advani Brothers, Ex-B-1 were three shipping samples which represented genuine parts of the consignment of all the three ships S. S. Canton, Arcturus and Nissan Maru as regards the consignment covered by the licence of Continental Exports Corporation Ltd. Ex. C was the envelope in which were found Exs. C-1, C-2 and C-3 : C-1 was a paper wrapper containing Ex. C-2 the cover of a pack of Bonus cards and Ex. C-3 a sample of genuine Bonus cards, these cards being contraband goods. Two brands of cards including Bonus cards were in the consignment of the two ships other than S. S. Canton. Ex. D was a document on which were jotted a number of figures which according to the prosecution was an account of the contraband goods on some of the ships. Exs. E and E-1 were catalogues of Roamer and Favre Leuba watches. It is admitted that some Roamer watches were in the S. S. Canton consignment but not in other ships. Exs. F and F-1 obviously contained some kind of code which could not be deciphered and about which no reference was made in the judgments of the courts below. Ex. F-2 contains an account of S. S. Canton consignment the documents being headed with the words "Ton". A Panchnama was duly made regarding the search being Ex. A. Very soon after the search a telegram

appears to have been sent by one Advani H. giving his telephone No. 264248 to accused No. 6 at Hong Kong reading :

"Stop everything. Attend telephone tomorrow."

This telephone admittedly stood registered in the personal name of the first accused. On the next day, i.e. 22nd July, 1959 a trunk call was booked on this telephone by one Lal Hotchand to accused No. 6. There was evidence that the call had become effective. Statements of the first and the second accused were recorded by customs officer on 22nd July, 1959. Summons under Section 171-A of the Sea Customs Act were served on the first accused and certain documents were produced. Sunderdas, the proprietor of Tarasingh and Sons was asked by the Customs Officer to produce the bills of entry relating to the three consignments for the three ships mentioned, namely, S. S. Canton, Arcturus and Nissan Maru. Under his instructions his son Shyamlal contacted accused No. 4 to get the bills of entry. Shyamlal and accused No. 4 went to the residence of accused No. 2. The bills were not immediately forthcoming and accused No. 2 handed over to Shyamlal and chit Ex. Z-2 to the effect that the bill of entry of S. S. Canton had been received by him on 21st July, 1959. This chit was handed over to Sunderdas and by him produced before the Customs Officer. Statements of Sunderdas, Shyamlal and Kambli were recorded on July 23, 1959. Further statement of the second accused was recorded on 24th July and while making this statement accused No. 2 produced bills of entry relating to S. S. Canton and Star Arcturus along with the other documents relating to or in respect of these consignments. Further attempts were made to get hold of the bill of entry relating to S. S. Nissan Maru by the customs office. Accused 3 and 5 were also contacted over this. Accused 5 stated that they would be found with accused No. 2. Ultimately accused No. 4 brought forward the bill of entry Ex. Z-5. The consignment of S. S. Star Arcturus was examined on 24th July, 1959 and that of S. S. Nissan Maru on August 1, 1959. Statements of accused 3 were recorded on 11th and 12th August, 1959. Further searches were made in the business premises of H. B. Advani Brothers, Indo Far East Traders, Fine Art Traders and Aarkey Saree Museum and other documents were seized. Statements of various persons were recorded up to December 1959 and ultimately a complaint was filed, as already mentioned. All the accused put in separate written statements. They were also examined under Section 342, Cr. P. C. It appears that every one of the accused tried to put the blame on to another or others.

9. Put shortly the defence of the accused was as follows : The first accused admitted the search of the permises of H. B. Advani Brothers on 21st July, 1959 and the seizure of the documents and articles mentioned in the Panchnama Ex. A. He denied exclusive possession of the premises or even the table having the drawer which according to the prosecution case contained Exs. B to E. He claimed to be merely a manager of the firm which belonged to his father and uncle and denied any financial interest therein. His version was that accused No. 2 used to keep some of his documents and goods in the premises of H. B. Advani Brothers. He did not deny the correctness of his statement before the Customs Officer Ex. Z-142 and the only point made about it was that it was inadmissible in evidence in view of the provisions of Section 171-A of the Sea Customs Act, Section 132 of the Evidence Act and Article 20(3) of the Constitution.

10. Accused No. 2 admitted that he used the premises of H. B. Advani Brothers for keeping his documents, goods and articles, that he was doing business in the name of Indo Far East Traders, that accused No. 6 was his cousin, that he used to export Indian goods to accused No. 6 and receive import licences against the same and used to import goods on import licences of others also. His goods were cleared by Tarasingh and Sons with the help of accuse No. 4. He admitted friendship with accused No. 3 and acquaintance with accused No. 5 through accused No. 3 when these two

started business in partnership. According to him accused 6 had telephoned him from Hong Kong and requested him at the instance of accused 3 who was already there to purchase for the latter a licence in the market for Rs. 2,500/- and let him have the particulars of the licence so that accused 6 could prepare the documents in respect of the shipment already effected by S. S. Star Arcturus to be negotiated with the bank. He was informed by accused 6 that accused No. 3 did not want his partner accused 5 to know about this consignment of Rayon suitings and was further requested by accused 6 not to use up the balance of his licence amounting to Rs. 1,600/- or so that accused No. 3 could utilise the same to the extent available and pay accused 2 at the rate of 110 per cent. of the value of the balance of the licence. Accused 2 agreed to this. In pursuance of the above, he completed negotiations with Gododia of M/s. Purshottamdas Bhagwandas who furnished particulars of the licence available. This was communicated by accused 2 to accused 6. He paid Rs. 4,412/- by cheque to M/s. Purshottamdas Bhagwandas and claimed that this was on behalf of accused 3. His further case was that he came to know subsequently that the balance of his import licence had been utilised by accused 6 for Meghraj, accused 3, for the shipment of Rayon suiting sent on S. S. Canton due to arrive in Bombay in the middle of July, 1959. All this went to show that even according to accused 2 the consignment by S. S. Canton though in the name of Indo Far East Traders was intended for accused No. 3, Meghraj. About 11th or 12th July, 1959 accused came from Hong Kong and paid him certain amount by way of premium for making the balance of import licence available to him as requested by accused 6. Accused 3 promised to make arrangements for getting the goods cleared from S. S. Arcturus and S. S. Canton. He received intimation from Purshottamdas Bhagwandas on 16th July, 1959 that the latter had received a presentation memo from the United Commercial Bank Bombay. Accused 2 made payment to the bank and returned the document. But all this was claimed to have been done for and at the instance of accused 3. His further version was that it was accused 3 who had asked him to sign the SAI relating to S. S. Canton and the bonds Exs. Z-3 F. and Z-3-F-1 assuring him that he would make arrangements to pay the bank and retire the documents. Accused 2 however claimed not to be aware as to who had actually paid the money to the bank and retired the documents. He had contacted accused 3 on 22nd July, 1959 and asked him to hand over the documents relating to consignments of S. S. Canton and S. S. Star Arcturus and that it was accused 3 who had handed over these documents to him (A-2) and he had thereafter produced the same before the Customs Officer on 24th July 1959. He admitted giving the chit Ex-Z-2 to Shyamlal but denied knowledge of the contraband nature of the consignments sent on S. S. Canton and S. S. Star Arcturus. In substance his defence was that imports of S. S. Canton and S. S. Star Arcturus were not his imports but those of accused 3.

11. The defence of accused 3 was that he was not concerned with the imports per S. S. Canton and S. S. Star Arcturus. Although he admitted being in partnership with accused 5 his case was that taking advantage of his absence from Bombay from 1st June 1959 till 10th July, 1959 accused 5 had entered into a deal with P. W. Bhojraj in respect of the consignment of S. S. Nissan Maru, sent on the import licence of Continental Exports Corporation and that the transaction was not a partnership one but the sole concern of accused 5 about which he had no knowledge. With respect to the payment of the money which was entered in the book Ex. H, claimed by the prosecution to be the account book of the firm, his explanation was that the book did not belong to the partnership and the entries therein were made by accused 5 to suit his own purpose. Further, according to him, Kambli did hand over to him two bills of entry on 22nd July, 1959 but he had not gone to meet Kambli to receive the documents. Kambli had requested him to hand over the bills of entry to accused 2 and he had acceded to that request. He admitted having made the statements Exs. Z-110 and Z-110-A but he said that they were not accurate inasmuch as his explanations were not recorded and he had been threatened with arrest if he did not make the statements.

12. The defence of accused 4 was that he was a regular employee of Tarasingh and Sons and that whatever was done by him was under the instructions of the proprietor of the firm and/or his son, Shyamlal. He denied the prosecution version that he was not a regular employee of Tarasingh and Sons but had merely made use of the name of that firm. He also made a statement Ex. A-207 but according to him this was not correctly recorded. He disclaimed knowledge of the contraband nature of the consignments and denied having chosen the middle case for examination by customs officers under instructions of other conspirators. According to him it was Kambli who was working under the directions of Sunderdas and Shyamlal and he used to select a particular case for examination by the customs officer under Kambli's instructions.

13. The defence of accused 5 was that he was a sleeping partner and it was accused 3 who used to look after the business of Fine Art Traders. According to him the deal with P. W. Bhojraj was a normal business deal done on a forward contract basis and entered into at the request of accused 2 to make a profit of Rs. 1,400/-. His main defence was that the consignment per S. S. Nissan Maru under the import licences of Continental Export Corporation was that of accused 2 and not his although he admitted having paid Rs. 4,200/- to P. W. Bhojraj by a cheque.

14. The Magistrate held that accused 1 to 6, the appellants before this Court, were parties to a conspiracy as alleged by the prosecution and rejecting their defence he convicted them under Section 120-B, I.P.C. read with Section 167(81) of the Sea Customs Act and Section 5 of the Imports and Exports (Control) Act, 1947. The accused were also convicted in respect of different charges severally as mentioned in his final order.

15. The relevant details with to the consignments on the three ships are as follows. S. S. Canton had left Hong Kong on 6th July, 1959 reaching Bombay on 19th July, 1959. The relevant bill of lading Ex. Z-259 was dated 5th July, 1959. The bank at Bombay (The United Commercial Bank Ltd.) presented the schedule of bills to the consignee, Indo Far East Traders on the same day. The second accused applied to the Reserve Bank for exchange. He admittedly executed the bond form for securing the goods Ex. Z-3-F but alleged to have done so at the instance of accused 3. The documents relating to the consignment directly received by accused 2 were brought by accused 4 on 13th July, 1959 for preparation of the bill of entry and for noting. Accused 4 got the same prepared by Sunderdas. Accused 2 however did not admit, as alleged by the prosecution, that he had paid the bank and retired the documents but he had no knowledge as to who had done it. On 22nd July 1959 accused 4 got the examination order of the bill of entry through prosecution witness, Kambli. On the day following he and Shyamlal (son of Sunderdas) Contacted accused 2 when he gave them the chit Ex. Z-2 already mentioned. This was produced along with other documents before the customs authorities by accused 2. On 25th July, 1959 the consignment was seized and searched and case No. 2 out of the two cases forming the consignment was found to contain contraband goods.

16. S. S. Star Arcturus started from Hong Kong on 20th June, 1959 with the relevant bill of lading dated the same day. The schedule of bills dated 10th July, 1959 was received by the bank in Bombay on 13th July and presented to Aarkey Saree Museum. The bond form was executed admittedly by accused 2 signing as B. T. Shivdasany on 20th July. The documents were admittedly retired from the bank by accused 2 after payment of money on 21st July, 1959. Previously thereto the bill of entry in respect thereof was prepared by Sunderdas at the instance of accused 4 and presented for noting on 21st July. The examination order was obtained on the same day but as the customs authorities had already appeared on the scene the goods could not be successfully cleared. On 24th July, 1959 accused 2 produced the bill of entry with other allied documents before the customs officers. Seizure of the goods and examination thereof also took place on the same day and out of

three consignments Nos. 20, 21 and 22 contraband goods were found in cases 20 and 22.

17. S. S. Nissan Maru left Hong Kong on 24th June, 1959. The schedule of bills dated 20th July was received by the bank in Bombay on 22nd July. The ship arrived in Bombay on the day following. The bank submitted the presentation memo of one consignment to Messrs Laxminarayan Mahavirprasad, the apparent consignee on 24th July, 1959. According to the prosecution, after the search of the premises of R. S. Advani Brothers on 21st July and the despatch of a cable to accused 6 on 22nd July the latter instructed the bank at Hong Kong to write a letter to the bank in Bombay to return the papers regarding this consignment on S. S. Nissan Maru. The letter which was produced bears the date 23rd July, 1959. In terms to that letter the bank returned the papers. The customs officers however seized the duplicate set which was sent by sea mail and produced by the bank. The consignment on S. S. Nissan Maru sent on the licence of Laxminarayan Mahavirprasad was seized by the customs officers on 4th August 1959, and out of three cases Nos. 23, 24 and 25 contraband goods were found in cases 23 and 25.

18. The other consignment of S. S. Nissan Maru sent on the licence of Continental Exports Corporation was covered by the schedule of bills Ex. Z-236. This was received by the bank in Bombay on 14th July, 1959 and on the day following the bank sent intimation to the apparent consignee. The bank also sent a second intimation. As in the mean while the bank at Hong Kong by letter dated 30th July, 1959 had asked the bank in Bombay to return the documents relating to the consignment, the bank in Bombay returned the documents on 4th August, 1959. Before that however the consignment had been seized and searched and out of three cases bearing Nos. 8, 9 and 10 contraband goods were found in cases 8 and 10.

19. In holding the accused guilty of offences of conspiracy the High Court relied on several circumstances. The first of these was the outcome of the search of the premises of H. B. Advani Brothers on 21st July, 1959 when various documents and articles were seized. The two exhibits which require special attention are Exs. B-1 and F-2. Ex. B-1 mentioned all the three ships S. S. Nissan Maru, Arcturus and Canton, although the importers of the goods were all different. Ex. F-2 was held by the High Court to give a complete account of the goods found on S. S. Canton.

20. The second circumstance was the origin of all the shipments, the shipper in each case being accused 6. The third circumstance relied upon by the prosecution was the virtual admission that accused 3 was staying in Hong Kong with accused 6 from 10th June to 19th July, 1959 during which period all the consignments were put on board.

21. The next circumstance was that accused 4 though not a clearing agent himself was utilising the name of Tarasingh and Sons for clearing all the goods of all the consignments in question.

22. The manner in which the examination orders of the goods were obtained from the customs officers for examination of the middle cases in respect of consignments consisting of three cases was also significant. According to the prosecution the conspirators knew and had arranged that genuine goods should always be put in the middle case.

23. The association between the accused, specially accused 2, 3 and 4 in respect of the steps taken for clearing the goods covered by the consignments in question according to the High Court went to prove the conspiracy. Further, according to the prosecution the cable sent to Hong Kong on 21st July, 1959, after the search and the trunk telephone call on 22nd July, support the same.

24. The High Court dealt generally with the charge of conspiracy against all the accused and individually with respect to the charges raised against each accused and considered the explanations given by them with regard to the circumstances tending to criminate them. Mr. Jethmalani who argued the case of the first appellant at some length raised various questions of law with regard to the admissibility of the evidence afforded by statements before the Customs Officers under Section 171-A, the conclusion of the High Court that his client had custody or possession of all the exhibits found as a result of the search of the premises of H. B. Advani Brothers on 21st July, 1959, the correctness of the finding of the High Court that Ex. F-2 contained a complete account withe regard to the consignment per S. S. Canton, the finding of the High Court that the C.I.F. value of the goods exceeded the invoice value many times over by relying on the evidence of an appraiser of the Customs Department and the absence of any overt act on the part of his client after the search on 21st July, 1959. The argument with regard to the admissibility of evidence of the statements was adopted by counsel for all the other accused and need not be dealt with separately. Mr. Jethmalani virtually conceded that if his contentions on the above heads were not accepted by this Court, it would be futile for him to argue that the High Court had gone wrong in coming to the conclusion as to the guilt of his client on the strength of the evidence before it and the inference which could legitimately be drawn therefrom.

25. We propose to deal with the other points before examining the contention with regard to the admissibility of the statements made in pursuance of powers exercised by the customs officers under Section 171-A. With regard to the finding of the High Court in agreement with that of the Magistrate that accused 1 had the custody or possession of exhibits Exs. B to F-2, counsel argued that except those seized from his wallet the others were found in the drawer of the table of the premises searched, there was no evidence to show that the said table was the table of his client and as there was no proof that his client had any financial or proprietary interest in the firm of H. H. Advani Brothers, there was nothing to warrant the conclusion that the exhibits other than those in the wallet were in his custody. The High Court dealt elaborately with this point and we do not think it necessary to re-examine the same except to note the comment made before the High Court as well as before us that the evidence of Mr. Darne, the Panch witness who had said that at the time of the search accused 1 was sitting at the table in a drawer of which the incriminating exhibits were found, was unbelievable. It was argued that inasmuch as the Panchnama did not record this fact, Darne who gave evidence in 1962 should not have been believed when he claimed to have remembered the fact of accused 1 sitting at the table mentioned. Both the courts accepted Darne's statement and we see no good reason to take a different view. After all it would not be extraordinary for any person to recollect even after a considerable lapse of time that when he entered the room which was going to be searched, he found a particular person seated at a certain table inasmuch as this would be the very first thing which would attract any body's attention.

26. With regard to Ex. F-2 which according to the prosecution case..... accepted by the courts below..... contained an account with regard to the consignment per S. S. Canton the prosecution case was that the figures on the left-hand side indicated the rates and the figures on the right-hand side indicated the total C.I.F. value of the goods and each type in that consignment. Before us exception was taken to the two figures 80.80 and 11.02 appearing on the right hand side. According to the prosecution the figure 11.02 was the amount of insurance premium in dollars paid in respect of the consignment on S. S. Canton. As the original which should have been with accused 2 was not produced, a copy of the insurance policy was put in and marked as Ex. Z-301. Ex. Z-259-F-1 was a copy of the same produced by accused 2 before the customs officers on 24th July, 1959 as was borne out by the statement of accused 2. The contents of the two exhibits were found to be the same by both the courts. The Claim Superintendent of the insurance company in Bombay produced the

copy of the marine premium note in respect of the said policy showing the amount of premium as $ 11.02 and said to have been received by the Bombay office of the insurance company. Objection was raised to the admissibility of evidence of the one Martin, Assistant Manager of New Zeland Insurance Company, Hong Kong Branch, who had joined that branch in 1963 i.e., long after the issue of the policy in 1959 although he had been an employee of the said company since 1952 and claimed to be familiar with the procedure of insurance of export cargo followed by the company. According to this witness, the company used to prepare as many copies of the policy as were required by the insurer. A carbon copy of the original was always kept in the office record. Martin produced an office copy of the policy in respect of the consignment on S. S. Canton to which was attached a marine premium debit note and it was his evidence that in the usual course of business of the company such a debit note was always prepared at the time when the policy was issued and a copy thereof was attached to the copy of the policy kept in the records. Counsel objected to the reception of the copy of the premium note on the ground that there was no proof of its making or its correctness. The High Court accepted the evidence of Martin that the copy of the premium debit note had been attached to the policy kept in the office record relying on the presumption afforded by illustration (f) to Section 114 of the Evidence Act that the practice of the insurance company of attaching such a note to the policy had been followed in this particular case. In our view, the High Court was entitled to do so and no objection can be allowed to be raised on the ground that there was no proof of the preparation of the original premium note.

27. With regard to the figure 80.80 counsel argued that there was no proof that this was the amount of the freight in dollars charged in respect of the consignment per S. S. Canton. Counsel argued that the freight paid was not shown in the bill of lading in this case Ex. Z-259-F and the production of the copies of the bill of lading Exs. M-3 and Z-148-W on which somebody had written the figure $ 80.80 did not establish the prosecution case. Ex. M-2 was the Manifest of Cargo per S. S. Canton and entry No. 5 therein showed that in respect of the consignment 80.80 dollars had been paid as freight. The prosecution adduced evidence of P.W. 45. Yeshwant Shankar Keluskar of Mackinon Mackenzie and Co., who produced the Import General Manifest dated 20th July, 1959 as also the Freight Manifest. According to this witness on the consignment on S. S. Canton 80.80 Hong Kong dollars had been paid as freight. He had no personal knowledge but made his statement on the basis of the record produced from his office. The prosecution also relied on Ex. M-3 the shipper's copy of the bill of lading produced before the customs officers on 24th July, 1959 by accused 2 containing the rate at which the freight was charged and also the actual amount of freight charged viz., 80.80 Hong Kong dollars. Objection was taken to this inasmuch as the amount of the freight did not appear in the bill of lading Ex. Z-259-F. The prosecution case was that freight was paid after the preparation of the bill of lading and just before the goods were actually put on board and the reasonable explanation was that the amount of freight had been calculated subsequent to the preparation of the bill of lading and endorsed thereon as on Ex. M-3 subsequently. According to the High Court it could be said to be a subsequent original endorsement on a copy and the High Court relied on Ex. Z-148-W a carbon copy of the bill of lading bearing a similar endorsement and also on the fact that on both Ex. M-3 and Ex. Z-148-W the words "freight paid" appeared impressed by a rubber stamp in addition to the calculation of freight and the actual amount of freight. In our opinion, the High Court rightly held that all this established the prosecution case that the figure 80.80 in Ex. F-2 indicated the freight that was actually paid for the consignment on S. S. Canton. As Ex. M-3 was produced by accused 2 the consignee before the customs officer on 24th July, 1959 and contained the said endorsement, the High Court was entitled to draw the necessary inference therefrom supported as it was by Ex. Z-148-W the Captain's copy of the bill of lading which bore a similar endorsement.

28. Counsel contended that the evidence of P.W. 90 the appraiser of customs with regard to the C.I.F. value and the market value of the goods was at best hearsay and should have been rejected by both the courts below. The entries relied on in this connection appear on Ex. D found in the possession of accused No. 1. There was no evidence to show that it was written by him. P.W. 90 J. M. Jamedar's evidence was that he had been acting as an appraiser of customs doing valuation work for 11 years and had experience in the valuation of Japanese Rayon goods, fountain pen refills, Roamer watches, plastic buttons, playing cards, etc. He had taken samples from the consignments and noted the particulars thereof and had made the valuation of the goods of the consignments in question after making enquiries from the market and on the basis thereof had stated the C.I.F. value at the relevant time. This witness had been subjected to prolonged cross-examination but nothing came out therein which would enable the court to hold that his testimony was unreliable. The witness had stated that the goods had been valued by him after making necessary enquiries from the importers dealing in the same or similar goods supplied from foreign countries as well as by referring to prices offered or quotations whenever available and where it was not possible to obtain the C.I.F. value from the market he had assessed the value of such items to the best of his judgment and experience. It was argued by counsel that as the witness was not himself a party to whom offers and acceptances had been made or communicated by others and as he did not claim to have been present when such offers and acceptances had been made, his evidence as regards the value was hearsay. It was said that at best he was a mere conduit pipe of enquiries from others and was not in the position of an expert. We find ourselves unable to accept this submission. Jamedar according to his unshaken testimony had been working as an appraiser of customs for 11 years out of his 16 years' service and was engaged in the valuation of goods and ascertaining their C.I.F. value. He had occasion to value goods which formed the subject-matter of consignments of S. S. Canton. He claimed to have made enquiries in the market with regard thereto. Apart from his own experience and knowledge the record shows that the witness gave evidence as to the C.I.F. value of a very large number of articles and it should have been quite easy for the defence who cross-examined him at great length to discredit his testimony by offering evidence from the market that the witness's estimate as to the C.I.F. value of any particular item was unreliable. After all what the court had to do in this case was to form an opinion as to whether the C.I.F. value greatly exceeded the invoice value as put forward by the prosecution and Jamedar's evidence certainly went to show that the C.I.F. value and the market value of the contraband goods imported was far in excess of the value thereof mentioned in the invoices.

29. It may be mentioned here that the document Ex. D mentioned the consignments inter alia of all the three ships and the High Court held that the document related to imports in which accused 2 was interested and possession of the document by accused 1 went to show that he too was concerned in such imports.

30. We now come to the question as to the admissibility of the statements made to the customs officers under Section 171-A of the Sea Customs Act. At the outset it has to be noted that this section came into the Statute Book in the year 1956 and there was nothing similar to it in the Act before such inclusion. The section reads :

> "(1) Any officer of customs duly employed in the prevention of smuggling shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.
>
> (2) A summons to produce documents or other things may be made for the

production of certain specified documents or things or for the production of all documents or things of certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they were examined or make statements and to produce such documents and other things as may be required :

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 183 and Section 228 of the Indian Penal Code."

In Maqbool Hussain v. The State of Bombay (1953 SCR 730) where provisions of the Sea Customs Act were considered at some length by this Court before the amendment of 1955 by insertion of Section 171-A it was said (at p. 742) :

"All this is for the enforcement of the levy of and safeguarding the recovery of the sea customs duties. There is no procedure prescribed to be followed by the Customs Officer in the matter of such adjudication and the proceedings before the Customs Officers are not assimilated in any manner whatever to proceedings in courts of law according to the provisions of the Civil or the Criminal Procedure Code. The Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness.... All these provisions go to show that far from being authorities bound by any rules of evidence or procedure established by law and invested with power to enforce their own judgments or orders the Sea Customs Authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rates of duty and penalty prescribed in the Act.....

"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."

The Court in that case dealing with the question as to whether an order of confiscation was a punishment inflicted by a court or a judicial tribunal within the meaning of Article 20(2) of the Constitution.

31. In Thomas Dana v. The State of Punjab (1959-Supp (1) SCR 274 & 286) the provisions of the Sea Customs Act were examined again and referring to Section 187-A it was said :

"This section makes it clear that the Chief Customs Officer or any other officer lower in rank than him, in the Customs Department, is not a "court", and that the offence punishable under Item 81 of the Schedule to Section 167, cannot be taken cognizance of by any court, except upon a complaint in writing, made as prescribed in that section."

With regard to the use of the word 'offence' indiscriminately all over the Act it was said :

> "All criminal offences are offences, but all offences in the sense of infringement of a law, are not criminal offences..... but when a trial on a charge of a criminal offence is intended under anyone of the entries of the Schedule aforesaid, it is only the Magistrate having jurisdiction, who is empowered to impose a sentence of imprisonment or fine or both."

It was argued before us that the position became entirely different as a result of the inclusion of Section 171-A as sub-section (4) of the section went to show that an enquiry by customs authorities wherein statements of persons were recorded was "to be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code". Counsel argued that such proceeding was a judicial proceeding also for the other purposes thus attracting the operation of Section 132 of the Evidence Act. Apart from the point as to non-exercise of a claim of privilege (about which we express on opinion) there can be no question that if the said section of the Evidence Act is to be attracted to such a proceeding statements made by him in any such inquiry could not be proved against him in the criminal proceedings launched. It was argued that sub-section (3) of Section 171-A made it obligatory on the persons summoned to state the truth upon any subject respecting which he was examined and if the proceeding was a judicial proceeding there was nothing to exclude the applicability of Section 132. Our attention was drawn to Section 1 of the Indian Evidence Act which made the statute applicable to all judicial proceedings in or before any court in the whole of India. As 'court' in Section 3 included all Judges, Magistrates and all persons, except arbitrators, legally authorised to take evidence, it was contended that the customs officer being authorised by Section 171-A of the Sea Customs Act were 'Courts' within the meaning of the definition of Section 3. Reference may also be made to the definition of 'evidence' in the said section which shows that the word means and includes inter alia all statements which the court permits or requires to be made before it by witness, in relation to matters of fact under inquiry.

32. Reference was also made to Section 4(1) of the Code of Criminal Procedure, 1898, under which 'investigation' for purposes of the Code includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf; and clause (m) which defines "judicial proceeding" as including any proceeding in the course of which evidence is or may be legally taken on oath. Counsel relied strongly on the judgment of this Court in Lalji Haridas v. State of Maharashtra (1964(6) SCR 700) where this Court had to consider whether an Income-tax Officer exercising powers under Section 37 of the Income-tax Act, 1922 was a 'court' within the meaning of Section 195(1)(b) of the Code of Criminal Procedure making the sanction thereunder obligatory for the filing of a complaint in respect of an offence alleged to have been committed under section 198 of the Penal Code. Sub-sections (1) to (3) of Section 37 of the Income-tax Act were worded somewhat differently from those of sub-sections (1) to (3) of Section 171-A the Sea Customs Act. The words in sub-section (4) of Section 37 are for all practical purposes identical with those used in Section 171-A(4). There this Court by a majority of three to two were of opinion that the proceedings before the Income-tax Officer were judicial proceedings not only under Section 193 of the Indian Penal Code but were also to be treated as proceedings in any court for the purpose of Section 195(1)(b) of the Code of Criminal Procedure. The majority Judges referred to the sections in the Indian Penal Code and the Criminal Procedure Code mentioned above and to provisions in various other Acts wherein the Legislature had expressly mentioned that Section 195 Cr. P.C. would apply to proceedings before diverse authorities and accepted the argument that reading Section 193, I.P.C. and Section 195(1)(b), Cr. P.C. together it would be reasonable to hold that proceedings which are

judicial under the former should be taken to be proceedings under the latter. According to the minority Judges although the word 'judicial proceeding' was wide enough to include not only proceedings before a 'court' but proceedings before certain tribunals it was clear from a decision of this Court in Indo-China Steam Navigation Co. Ltd. v. The Additional Collector of Customs (1964(6) SCR 594) that a Customs Officer "was not 'a court or Tribunal' and Section 37(4) of the Income-tax Act should not be given a meaning different to that given in Section 171-A(4) of the Sea Customs Act".

33. In our view if the Legislature intended that the inquiry under Section 171-A was to be considered a judicial proceeding not within the narrow limits therein specified but generally, it could have used suitable words to express its intention. Although this Court gave a wider meaning to the expression 'judicial proceeding' in Lalji Haridas's case (supra) there is nothing in that judgment to warrant a still wider interpretation of that definition.

34. Mr. Jethmalani referred to the provisions in the Indian Oaths Act (X of 1873) and on the basis of his argument that the statements under Section 171-A(4) were made on oath contended that the proceeding became a judicial proceeding in the wider sense of the word. In our view, the Oaths Act has no application here. The preamble to the Act shows that it was an Act to consolidate the law relating to judicial oaths, affirmations and declarations and was enacted because the Legislature thought it "expedient to consolidate the law relating to judicial oaths, affirmations and declarations and to repeal the law relating to official oaths, affirmations and declarations. Section 4 of the Act provided that -

"The following Courts and persons are authorised to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :

> (a) all Courts and persons having by law or consent of parties authority to receive evidence."

The relevant portion of Section 5 runs :-

> "Oath or affirmations shall be made by the following persons :-
>
> (a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons and to receive evidence."

35. Counsel argued that a Customs Officer was a person who had authority by law to receive evidence within the meaning of Section 4 of the Oaths Act and anybody who could be lawfully examined before such a person would be a witness within the meaning of Section 5 and as such it would be necessary to administer oath to them. In our view, the argument proceeds on a complete misconception of the provisions of the Act. The preamble to the Act shows that the oaths referred to are only judicial oaths and Section 7 shows that all such oaths had to be administered according to such forms as the High Court might prescribe. The Customs Officers have nothing to do with such forms and nothing has been shown to us that any such formality was ever complied with. Neither do the records show that any oath was administered to any person making a statement under Section 171-A. In Maqbool Hussain's case (supra) this Court stated expressly that the Customs Officers were not authorised to administer oath and the position according to us is not altered by the insertion of

Section 171-A in 1955.

36. Mr. Jethmalani referred us to the decision in Queen Empress v. Tulja (12 Bom 36 at p. 42) and to certain observations of West, J., in that case. There it was held that a Sub-Registrar under the Registration Act (III of 1877) was not a Judge, and, therefore, was not a 'Court' within the meaning of Section 125 of the Code of Criminal Procedure and as such his sanction was not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. Weet, J., had however observed that -

> "An inquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; between him and the community generally; but even a judge, acting without such an object in view, is not acting judicially."

Relying on this observation counsel argued that the object of an inquiry under Section 171-A was to find out and establish the jural liability of the persons making the statement, viz., whether he had committed an offence or not, as such the inquiry was a judicial proceeding. In our view, the argument is not worthy of acceptance. At the stage envisaged by Section 171-A a Customs Officer is given the power to interrogate any person in connection with the smuggling of any goods which it is his duty to prevent. Such a person may have nothing to do with the smuggling of any goods although he may know where such goods are or who has or had them. Sub-section (3) of Section 171-A does not compel any person to make a statement but if he makes a statement he has to state the truth so as to void punishment under Section 193, I.P.C. At that stage nothing may be known as to whether an offence has been committed or who has committed it and the person interrogated at that stage certainly is not a person accused of or charged with an offence. He is merely called upon to give evidence to facilitate the inquiry. He is not a witness giving evidence in a court and his testimony will make him liable under Section 198, I.P.C. only because of the express provision of law in sub-section (4) of Section 171-A.

37. Counsel also argued that as a Customs Officer according to all the decisions of this Court already mentioned, is to act judicially, a proceeding for recording evidence before him was a judicial proceeding. This is not without any force because even administrative officers have to act judicially. Counsel further argued that a deeming provision in a statute was not necessarily designed to give an artificial construction to a word or a phrase but it might be used for other purposes also. He referred to the case of St. Aubya v. Attorney-General (1951-2 AER 473 at 498) where it was said :

> "The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute an artificial construction for a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

It was argued that the Legislature might well have used the word "deemed" in sub-section (4) of Section 171 not in the first of the above senses but in the second, if not the third. In our view, the meaning to be attached to the word "deemed" must depend upon the context in which it is used. In Lalji Haridas's case (supra) this Court went elaborately into the question as to the extent of this deeming provision which would have been wholly redudant if the word "deemed" in Section 171-

A(4) was used in any sense other than to give an artificial construction.

38. The second branch of Mr. Jethmalani's argument under this head was that the principle underlying Section 132 of the Evidence Act was a principle of Common Law well known to criminal jurisprudence and as such was applicable even if Section 132 in terms was not attracted. In this connection, he referred us to certain observations of Subbarao, J., (as he then was) in Amba Lal v. The Union of India and Others (1961-1 SCR 933) where in his dissenting judgment on the interpretation of Sections 168-A and 171-A of the Act his Lordship had observed that :

> "To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply."

Counsel also referred us to the decision in Negina v. Benjamia Scott (169 English Reports page 909). The question before the court in that case was whether the answers to the questions put to the defendant before the Court of Bankruptcy relating to his trade dealings and estate tending to disclose a fraud of concealment of his property was admissible evidence against him on an indictment charging him with altering, mutilating and falsifying his books with intent to defraud his creditors. The examination was taken in conformity with Section 117 of the Bankrupt Law Consolidation Act (12 and 13 Vict. C. 105) which enacted that a Bankrupt may be examined by the court "touching all matters relating to his trade, dealings or estate, or which may tend to disclose any secret grant, conveyance or concealment of his lands etc.". There was no dispute that the questions put were relevant as touching matters relating to his trade, etc. Delivering judgment in which three other Judges concurred, Lord Compbell, C.J., held that the defendant was bound to answer the questions although by his answers he might criminate himself. According to the learned Chief Justice :

> ".....and we think it would be contradiction of the expressed intentions of the Legislature to permit the bankrupt to refuse to answer such questions; for ever since the reign of Elizabeth successive statutes have been passed, purporting to guard against frauds in bankruptcy and the bankrupt, when called upon to answer questions respecting his estate and effects, should not be allowed to avail himself of the common law maxim "memo tenetur se insum accusare."

With regard to the maxim relied on by the defendant's counsel he said :

> "But Parliament may take away this privilege, and enact that a party may be bound to accuse himself, that is, that he must answer questions by answering which he may be criminated."

He further held that the maxim could not be treated as an implied proviso to be sub-joined to the 117th Section.

39. Mr. Jethmalani however relied on certain observations of Coleridge, J., in his dissenting judgment. In our view, the maxim of the English Common Law can have no application here. Our law of evidence which is a complete Code does not permit the importation of any principle of English Common Law relating to evidence in criminal cases to the contrary. Section 2 of the Indian Evidence Act before its repeal by the Repealing Act (I of 1938), provided as follows :

> "2. On and from that day (1st September, 1872) the following laws shall be repealed :
>
> (1) all rules of Evidence not contained in any Statute, Act or Regulation in force in any part of British India;
>
> (2) all such rules, laws and regulations as have acquired the force of the law under the 25th Section of the 'India Councils Act, 1861' in so far as they relate to any matter herein provided for; and
>
> (3) the enactments mentioned in the Schedule hereto, to the extent specified in the third column in the said Schedule.

But nothing herein contained shall be deemed to affect any Provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed."

We may usefully refer to the judgment of the Privy Council in Sris Chandra Mandi v. Rakhalananda (deceased) (ILR 1941-1 Cal 468) where the Judicial Committee approved of the statement of the law contained in the judgment of the High Court reading :

> "It is to be noticed in this connection that Section 2(1) of the Indian Evidence Act repeals the whole of the English common law on evidence so far as it was in force in British India before the passing of the Indian Evidence Act, and that provision of the law in effect prohibits the employment of any kind of evidence not specifically authorised by the Act itself."

Lord Atkin who delivered the judgment of the Judicial Committee pointed out that evidence which was not admissible under the Indian Evidence Act could not be let in for the purpose of bringing out the truth and said :

> "What matters should be given in evidence as essential for the ascertainment of truth, it is the purpose of the law of evidence, whether at common law or by statute to define. Once a statute is passed, which purports to contain the whole law, it is imperative. It is not open to any judge the exercise a dispensing power, and admit evidence not admissible by statute, because to him it appears that the irregular evidence would throw light upon the issue. The rules of evidence, whether contained in a statute or not, are the result of long experience, choosing no doubt to confine evidence to particular forms, and therefore eliminating others which it is conceivable might assist in arriving at truth."

The question there related to the admissibility of evidence which according to the Judicial Committee should not have been adduced. The question before us is somewhat different but if the Indian Evidence Act is a complete Code repealing all rules of evidence not to be found therein, there is, in our opinion, no scope for introduction of a rule of evidence in criminal cases unless it is within the four corners of Section 132 or some other provision of the Evidence Act. As the Act does not apply to interrogations by a Customs Officer exercising powers under Section 171-A of the Sea Customs Act Section 132 of the Evidence Act cannot be attracted.

40. Lastly, it was contended that Section 171-A did not authorise interrogation of a subject to extract admissions from him which could be used against him on a future occasion. In aid of this proposition reliance was placed on a decision of the House of Lords in Commissioners of Customs

and Excise v. Harz. (1967-1 All ER 177). The main question there was whether the answers given by the respondents in the course of interrogation by Customs Officer were admissible in evidence. The power to interrogate was said to be derived from the Finance Act, 1946, Section 20(3) which provided in substance that every person concerned with the purchase or importation of goods etc. shall furnish to the Commissioners within such time and in such form as they may require information relating to the goods or to the purchase or importation thereof etc., and shall upon demand made by any officer or other persons any books or accounts or other documents of whatever nature relating thereto for inspection by that officer or person. On a construction of that provision Lord Reid was of the view that there was nothing therein to require the trader to give answers which might incriminate him. His Lordship also observed that the section gave the officer no right to submit the respondents to prolonged interrogation they had to undergo and the respondents could not have been prosecuted if they had refused to answer. His Lordship observed that the right of the Commissioners to require information was quite different and said :

> "If a demand for information is made in the proper manner the trader is bound to answer the demand within the time and in the form required whether or not the answer may tend to incriminate him, and if he fails to comply with the demand he can be prosecuted. If he answers falsely he can be prosecuted for that, and, if he answers in such a manner as to incriminate himself, I can see no reason why his answer should not be used against him. Some statutes expressly provide that incriminating answers may be used against the person who gives them and some statutes expressly provide that they may not. Where as here, there is no such express provisions the question whether such answers are admissible evidence must depend on the proper construction of the particular statute. Although I need not decide the point, it seems to me to be reasonably clear that incriminating answers to a proper demand under this section must be admissible if the statutory provision is to achieve its obvious purpose."

Prima facie these provisions are against the contention of the appellant. In that case the House of Lords in effect held that the provision of law did not entitle the Commissioners "to send a repre to confront the trader, put questions to him orally and demand oral answers on the spot; and..... that it does not entitle them to send their representative to subject the trader to a prolonged interrogation in the nature of a cross-examination". The provisions of Section 171-A are in sharp contrast to the provisions of law before the House of Lords. Here the statute expressly authorises officers of customs to secure the attendance of persons to give evidence or produce documents or things relevant in any enquiry in connection with the smuggling of goods. A limit is set to the right to obtain production in sub-section (2) of the section and sub-sections (3) and (4) lay down that if a person summoned does not state the truth in such an examination he may be proceeded against under Section 193 - I.P.C. for giving false evidence.

41. Counsel also drew out attention to the new Sections 107 and 108 of the Customs Act, 1952 where the power to examine persons has been given to all officers of customs by the first of the above-mentioned sections and the power to summon persons to give evidence and produce documents as in Section 171-A is given to a Gazetted Officer of customs under Section 108 of the new Act. In our view, this difference is immaterial for the purpose of this case and there is nothing in Section 171-A which limits the right of interrogation to questions the answers whereto may not incriminate the person interrogated.

42. The High Court considered at some length the question as to whether the statement of the

accused under Section 171-A(4) should be considered as a whole or whether reliance could be placed upon portions thereof rejecting the rest. It was argued before the High Court that inasmuch as the statements were sought to be relied upon as a confession the court was bound to take into account not only the portions containing admissions but also the explanations which followed. The High Court held that a statement under Section 171-A did not stand at par with a confession so that it had to be taken as a whole or rejected as a whole. Even with regard to the statements portions of which are inculpatory against the maker and other portions which are not, it has been held in a recent decision of this court that the inculpatory portion can be accepted if the exculpatory portion is found to be inherently improbable..... vide Nishi Kant v. State of Bihar. (Cr. A. 190/1966, decided on 2-12-1968 and reported so far in 1969(1) SCC 347 : AIR 1969 SC 422). In this case the explanations contained in the statements were considered by the courts below and for reasons given they thought fit to reject the same and we see no reason to come to a different view.

43. Counsel argued that the courts below had gone wrong in considering the despatch of a telegram to Hong Kong on 21st July, 1959 and the telephonic communication on the following day as a circumstance showing the complicity of the first accused in the conspiracy. It was said the telegram was sent by some one also and although the telephonic communication originated at the telephone which stood in the name of the first accused it could not have been made by him and he should not be held to have made an attempt thereby to prevent a co-conspirator from taking further steps in the importation of contraband goods to India. Even if the first accused did not actually send a telegram himself or take part in the telephonic communication, there can be little doubt that it was done in his and other persons' interest and to put a co-conspirator on guard.

44. Mr. Jethmalani's last submission was that his client was not shown to have made any purchase of any licence nor take part in any actual import and his explanation that Ex. F-2 had been given by Lal Hopchand to be given to accused 2 should have been accepted. It was said that at the worst the first accused was merely aware of the conspiracy but there was not enough evidence to hold him to be a participant in such conspiracy. On these grounds counsel also pleaded for a reduction of the sentence. The High Court rejected the explanation about the possession of Ex. F-2 which according to it should have been given on 22nd July, 1959 and the delay in explanation was not acceptable. The High Court was satisfied that first accused's possession of documents and the articles in the Panchnama Ex. 4 considered with his statement Ex. E-142 and the events that followed after 21st July, 1959 clearly established beyond doubt that the first accused must be a member of the conspiracy and we find ourselves unable to come to any different conclusion. In the result, the appeal preferred by him must be dismissed.

45. On behalf of the second accused Mr. Nuruddin Ahmed adopted the arguments on points of law made by Mr. Jethmalani and advanced a further contention that the trial of his client on various charges besides those connected with charges 2 and 3 had substantially prejudiced him. Counsel said that the High Court seemed to assume that accused No. 2 was a party to the conspiracy with regard to all the consignments in all the ships and if the High Court had to consider the explanation offered by his client only with regard to the second and third charges on which he was convicted it might well have come to a different conclusion. No doubt, the High Court held that accused No. 2 was found to be connected with imports of S. S. Canton and S. S. Arcturus only. The High Court considered all the circumstances which pointed to his complicity and examined his defence and explanation in great detail. The circumstances relied on by the High Court were as follows :-

> (1) Admittedly the licence for the imports of S. S. Canton was in the name of "Indo Far East Traders..... a proprietary concern of accused No. 2.

(2) The said accused had admitted signing the bond form in respect of the imports per S. S. Canton on 20th July and he had also signed the SAI form in respect of the same consignment.

(3) He had signed the application for transfer of exchange as Shivdasani, Manager, as a representative of Aarkey Saree Museum.

(4) He had signed Ex. U the bill of lading in respect of the consignment per S. S. Star Arcturus in the same manner.

From all these and the evidence adduced and considering the explanations offered, the High Court held that he was vitally interested in the consignments in the said two ships. He had also handed over to the Customs Officers the bills of entry in respect of the said consignments along with other documents.

46. As we were not called upon to consider the explanations offered by accused 2 in greater detail we refrain from expressing any further views thereon. In the result the appeal by accused 2 fails and is dismissed.

47. Mr. Chari who argued the case for accused No. 3 said that the circumstances relied on by the High Court for the purpose of maintaining the conviction of his client were not sufficient for the purpose. The said circumstances as given in the judgment in the High Court are as follows :-

(1) His presence at Hong Kong at the material time from 10th June to 10th July 1959 during which period all the consignments of contraband were shipped by the different ships.

(2) His association with accused 6 who was a common shipper of the "consignments as considered by the High Court except that on S. S. Hikone Maru which was left out of consideration."

(3) Accused 3 did not obtain any currency while proceeding to Hong Kong and this went against his version that he had gone on a business trip but all the same he had no discussion of any business with accused No. 6.

(4) He had taken the bills of entries Exs. Z-3 and Z-5 from Kambli for delivering the same to accused No. 4 on 22nd July, 1959 but in fact he had handed them over to accused No. 2.

(5) The cheque Ex. - Z-222 given to procure the import licence in respect of the consignment on S. S. Nissan Maru (Continental) by accused 5 out of the partnership assets of the firm Fine Art Traders of which accused 3 was admittedly a partner.

(6) Entry in the account book Ex. H-4 in respect of the said cheque.

The last two circumstances were considered by the High Court as the most material ones so far as this accused was concerned. The High Court found that even if Ex. H was not a regularly kept account book it was not a fabricated document as suggested by accused 3 specially in view of the fact that the account of Fine Art Traders with the British Bank of the Middle East went to show that deposits or withdrawals in that account tallied with the entries in the extract of the account from the

bank Ex. Z-232. The High Court also relied on the fact that the payment of Rs. 4,200/- to Bhojraj by cheque out of the partnership assets of accused 3 and 5 was not disputed. Mr. Chari argued that his client's explanation that it was really accused No. 5 who was responsible for the incriminating transaction should not have been rejected inasmuch as knowledge thereof or the taking part therein could not be imputed to accused 3 merely because of the entry in Ex. H-4 or of the payment of the cheque out of the partnership funds. It was said that there was no circumstance which entitled the court to reject his explanation that this was done by accused 5 for his own purpose. In our view, this argument of Mr. Chari has great force. In dealing with the facts which were brought up against accused No. 3 the High Court remarked :

> "It is true that each of the circumstances mentioned above by itself may not be conclusive to show that accused No. 3 was a party to the conspiracy in question but considering all the circumstances besides the acts of accused No. 5 mentioned above, do in our opinion lead to a reasonable belief that accused No. 3 must be a party to the conspiracy in question and his pleas that he had nothing to do with consignments in question cannot be held to be reasonably probable."

In our view, if the acts of accused No. 5 are put out of consideration, the cumulative effect of the other circumstances do not establish that accused No. 3 was a party to the conspiracy however strong the suspicion may fall on him. In such a situation the possibility of the explanation of accused No. 3 cannot be rejected and he ought not to be held guilty of the charges framed against him. In the result, we allow his appeal and directed him to be set at liberty.

48. With regard to accused No. 4 it was argued that the courts below had come to a wrong conclusion in holding that he was not a regular employee of Tarasingh and Sons and that it was he who had used the name of that clearing agent for the purpose of getting a dock permit and getting the bills of entry made. The High Court discussed this question at considerable length and we see no reason to come to any different finding. Both the courts below accepted the evidence of Sunderdas that besides getting a small sum of money for making the bill of entry his firm had nothing to do with the clearing of the goods and that what was done was the sole responsibility of accused No. 4.

49. The other plea raised on behalf of the said accused was that it was really not he but Kambli who was responsible for getting the order for examination of the goods in the way suggested for avoiding detection of the contraband and the role played by him was only a subsidiary one of following Kambli's instructions. The High Court rejected this plea and remarked that if accused No. 4 was a full-fledged employee of Tarasingh and Sons who admittedly had other employees also there was no explanation as to why the clearing work of the consignments in question should almost invariably be done by accused No. 4 with Kambli's help. The High Court relied on the absence of any evidence in indicate that this accused had worked for any client of Messrs. Tarasingh and Sons. There was definite evidence with regard to the consignment of S. S. Star Arcturus that the examination order was in fact obtained by this accused. That circumstance by itself might not be enough to hold the accused guilty but it had to be taken into consideration along with the circumstances against him. To avoid the examination of the cases containing the contraband goods the conspirators had to have the services of a person who was immediately concerned in getting the order for examination of goods and on the evidence, the High Court took the view that it was the fourth accused who filed such a role in this case. No doubt, the High Court remarked that the criticism of the evidence of Kambli was not wholly unjustified and dealing with the argument that Kambli himself must have been concerned with the conspiracy, the High Court said that -

> "It may be that he (Kambli) did suspect some foul play and yet did some jobs at the instance of accused No. 4, but considering his evidence as a whole along with the other evidence, we do not think that he was a participant in the illegal activities in question with the desire to join in these activities."

Nothing has been shown to us as to why we should take a different view of the evidence of Kambli.

50. Lastly, it was submitted on his behalf that he made little gain, if any, by the services rendered by him to the other accused and that the sentence of six months imposed on him was too severe. Even if it be a fact that accused No. 4 had made little monetary gain out of the affair, he played an important role in avoiding detection of contraband and as such we do not think it is right to reduce the sentence imposed on him. His appeal fails and is dismissed.

51. The plea of accused No. 5 that he was virtually a sleeping partner and that it was accused 3 who used to look after the business and that the consignment on S. S. Nissan Maru was an import by accused 2 was not accepted by the High Court. It was he who had given the cheque to Bhojraj and made the entry Ex. H-4 and it was urged on his behalf that as all this was done openly accused No. 5 must be taken not to have any guilty knowledge and that his conduct was consistent with his innocence. The High Court considered the defence of accused 5 when considering the case of accused 3 and whatever explanation was offered by accused 3 with regard to the payment and the entry Ex. H they were not available to him.

52. Before us it was argued the fact that accused 2 was in possession of all the bills of entry in respect of S. S. Canton, Star Arcturus and Nissan Maru (Continental) went to show that it was accused No. 2 who was making the import on the import licence of Continental Exports Corporation. The High Court rejected this plea on the evidence before it and nothing has been shown to us as to why we should take a different view. In the result the appeal of accused No. 5 fails and is hereby dismissed.

53. The net result is that all the appeals excepting that of accused No. 3, Meghraj Gopaldas Jham fail and are hereby dismissed. Meghraj Gopaldas Jham's appeal is allowed and he is set at liberty. His bail bond will be cancelled.

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