Collector of Customs, Madras and Others

Vs

D. Bhoormall

Civil Appeal No. 1142 of 1973

(M. H. Beg, R. S. Sarkaria JJ)

03.04.1974

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave arises out of the following facts.

2. On receiving information that some packages containing smuggled goods had been left by a person in the premises of M/s. Sha Rupaji Rikhabdas at 98, Narayana Mudali Lane, Madras-1 and that these packages were about to be despatched to Bangalore for disposal, a posse of Preventive Officers of the Customs House went to the said shop on June 4, 1962. They found ten packages in that shop. Baboothmull of M/s Sha Rupaji Rikhabdas was present there. The officer questioned Baboothmull about those packages. Baboothmull replied that he was not the owner of those packages and that somebody next to his shop had left them outside the premises and since that person had not returned for a considerable time, he got them removed into shop. Baboothmull was unable to throw any light with regard to the owner or the contents of the packages.

3. After getting a consent letter from Baboothmull, the officer opened the packages which contained these articles of the total value of Rs. 12,255.

> #1. Parker Fountain Pens (19 made in Canada) 28 Doz. Rs. 3,360.002. Master hair clippers made in Germany 5 Doz. Rs. 600.003. Oster Hair Clippers made in Germany 3 1/2 Doz. Rs. 400.004. Venus pencils made in England 760 Doz. Rs. 2,250.005. K. 55 Out thread razors made in Germany 68 Doz. Rs. 4,080.006. Nylon buttons made in Japan 47 Gross. Rs. 705.007. Gillette Razor Blades made in England 1,000 Pcs. Rs. 120.008. 7'O clock Razor sets made in England 12 Doz. Rs. 730.00 ---------- Rs.12,255.00 ----------##

The Officer seized these goods under a mahazarnama.

4. On June 9, 1962, a letter was addressed by the said Baboothmull to the Collector, Customs, informing that on that date, the owner of the package, one Mr. D. Bhoormull turned up to claim the goods; that his other partner was absent at the time of the seizure of the goods; that his other partner was absent at the time of the seizure of the goods who knew about this affair and that he had subsequently learnt from this partner that those goods belonged to D. Bhoormull who had left instructions for their storage in the shop. Subsequently, the name of this partner was given as Indermul. The Customs Officers attempted to find out contact this Indermul but without success.

5. Eight days after the seizure, a letter dated June 12, 1962, was received by the Collector Customs from one D. Bhoormull (Poonawala, temporarily at 98, Narayana Mudali lane, Madras-1) claiming ownership of the goods. In this letter it was stated that he had purchased these goods on June 3, 1962 in the local market at madras through brokers; that he was packing the same till late in the evening, and since he was forced to leave for Bangalore on the call of friend immediately, he instructed one of the staff of Sha Rupaji Rikhabdas to keep the goods in their shop until his return. This letter of Bhoormull did not contain the names or the particulars of the broker from who, m the goods were allegedly purchased; nor did it refer to any bill, voucher or other document to support the allegation of their having been purchased locally in the normal course of business. On receipt of this letter, the Collector made an attempt to contact Bhoormull for further investigation. Bhoormull, However could not be contacted as he had gone away to Poona which was said to be his normal place of activity.

6. Another letter, dated June 25, 1962, was received by the Collector from Bhoormull urging for release of his goods at an early date.

7. On July 3, 1962, a letter was received by the Collector from M/S. Gagrat & Co., Solicitors, Bombay on behalf of Bhoormull, requesting for disclosure of the grounds for the seizure of the goods, and for supply of the copies of the mahazarnama and other relevant documents relating to the seizure. It was reiterated that the goods had been bona fide purchased by Bhoormull in the course of business, and as such, were not liable to seizure or confiscation. This was followed by another letter, dated September 14, 1962, from M/s. Gagrat & Co., addressed to the necessary information, was reiterated.

8. The importation of goods shown as items 1, 4 and 7 had been prohibited since December 1957 and of those as items 2, 3, 5, 6 and 8 since March 1960, save under a licence issued by the Import Trade Control Authorities under Section 19 of the Sea Customs Act read with Section 3(1) of the Imports and Exports Control Act, 1947.

9. The Assistant Collector of Customs on October 26, 1962 issued a notice to Bhoormull through his Solicitors, M/s. Gagrat & Co., Bombay, requiring him to produce evidence of bona fide acquisition of why those goods valued at Rs. 12,255 be not confiscated under Section 167(8) of the sea Customs Act read with Section 3 (2) Imports and Exports Control Act, 1947. It was added that in case no reply was received within the specified period the case would be decided ex-parte on the basis of the facts already on record without further reference to him.

10. In reply, a letter, dated December 13, 1962, was written by the Solicitors in which, it was inter alia stated that on June 4, 1962, at Madras, the goods, being items 2 and 4 to 8, were purchased by their client from Broker Ram Lal for a total price of Rs. 10,675, and those shows as items 1 and 3, from Broker Shanthi Lal for a sum of Rs. 4,872, and that these brokers had not issued any bills or receipts regarding those goods. Any further particulars or addresses of the brokers were not disclosed.

11. On March 27, 1963, a revised show-cause notice was sent under registered cover by the Collector of Customs to Bhoormull, through his Solicitors, requiring him to produce within a week the purchase receipts, bills, vouchers, Customs auction-receipts, Central excise auction receipts, licences or any other documents in his possession and to furnish the names of the brokers in the market, their addresses etc., from whom the goods were purchased by him, failing which to show cause against confiscation of the goods.

12. The information called for was not supplied, nor did Bhoormull appear personally before the Collector at any stage. However, on his behalf the Solicitors wrote to the Collector, a letter, dated April 30, 1963, contending that the burden of proving that the seized goods had been illegally imported into India lay on the Customs Department and the non-production of the documents or non-furnishing of the information asked for by the Collector could not justify an inference of illicit importation of the goods. It was added that such goods had been imported as late as 1959/1960 as personal baggages and had in fact been sold by the Customs Department at Madras and elsewhere and as such were being freely bought and sold in the market.

13. A date was fixed by the Collector for personal hearing of Bhoormull. But he did not personally appear. However, on August 1, 1963, Shri J. R. Gagrat, of M/s. Gagrat & Co. appeared before the Collector with a representative of Bhoormull, and contended that unless the Department had any other indication, it would not be necessary for Bhoormull to establish ownership of the goods; that there were no purchase vouchers; nor was he in a position to produce the broker who was supposed to have left the goods near the shop of Baboothmull.

14. While conceding that the burden of proving the goods to be smuggled goods was on the Department, the Collector held that such burden prima facie stood discharged as the circumstances of this case irresistibly led to the conclusion that the goods had been illicitly imported. The main circumstances, taken into account by the Collector, in raising such an inference, may be arranged as under :

> (i) The import of such goods has been totally prohibited since 1975 except in the case of hair clippers and Venus Pencils, which were allowed on a highly restricted quota-basis till October, 1959/March, 1960, Policy period, when their import too was banned;
>
> (ii) The highly suspicious circumstances of the seizure and the dubious conduct of the parties in relation thereto : (a) This large number of goods, all of foreign origin, worth over Rs. 12,000, were found fully packed and ready for despatch, (b) Baboothmull from whose possession they were seized gave conflicting and evasive explanations in regard thereto. At the time of seizure on June 4, 1962, he disclaimed all knowledge about the ownership and contents of those packages, and said they were left outside the shop by a broker whom he could not identify. Some days later, he "appeared in the arena (grab ?) of an anonymous (fictitous ?) person, one Bhoormull". (c) It was eight days after the seizure that one Bhoormull by a letter claimed ownership of the goods, and Baboothmull also confirmed this. "This Bhoormull, the alleged owner of the goods, has never been seen. Even at the personal hearing a representative from him came .... All the correspondence was exchanged with the firm of Solicitors, namely M/s. Gagrat & Co. of Bombay", (d) Despite repeated requisitions made and two show-cause notices given by the Collector, no bill, voucher or other documentary evidence, whatever, regarding purchase of the goods in the recognised markets of the country was produced. At first, even the names of the seller were not disclosed. Later on M/s. Gagrat & Co. cited two brokers whose addresses were not furnished.

15. In view of the above circumstances the Collector held that there "was no room for doubt that the goods were acquired from illegally imported stocks". He, therefore, ordered their confiscation under Section 167(8) of the Sea Customs Act.

16. Against this order dated October 24, 1963, Bhoormull carried an appeal under Section 131 of the Customs Act, 1962 to the Central Board of Revenue which dismissed the same on September 7, 1964. Aggrieved, Bhoormull preferred a Revision Petition to the Central Government. It was dismissed by the Secretary to the Government by an order, date September 7, 1965.

17. Bhoormull then moved the High Court at Madras by a writ petition under Article 226 of the Constitution impugning the aforesaid orders of the Collector, the Board and the Central Government, contending that the confiscation was illegal because the Customs Department on which the onus of proving the unlawful importation of the goods lay, had failed to adduce any evidence whatever, to discharge that onus. The learned Single Judge who tried the petition repelled this contention, holding that the circumstances on record established "every probability of the goods having been illicitly imported to India", and dismissed the petition.

18. Against the order of the learned Single Judge, Bhoormull filed an appeal under clause (15) of the Letters Patent to the Division Bench of the High Court which held that the onus on the Department to prove that the goods had been smuggled, could not - in this case did not - shift on Bhoormull and that the latter's failure to appear personally or prove before the Collector how he had come by those goods, did not justify an inference of their illicit importation, because a mere suspicion cannot be a substitute for proof. On the above reasoning, the Bench allowed the appeal and quashed the Collector's order for confiscation of the goods. Hence this appeal with special leave, by the Department.

19. Before dealing with the contention canvassed, we would refer briefly to the relevant statutory provisions.

20. Section 167(8) of the Sea Customs Act provides for offences punishable to the extent mentioned in the 3rd column of the Schedule appended to that section. Clause (8) of that Schedule provides that if any goods the importation or exportation of which is for the time being prohibited or restricted by order under Ch. IV of this Act be imported into or exported from India contrary to such prohibition or restriction, then (i) such goods "Shall be liable to confiscation, and (ii) any person concerned in any such offence shall be liable to a penalty not exceeding three times of the value of the goods, or not exceeding 1,000 rupees".

21. Section 171-A specifically empowers the Customs Officers employed in the prevention of smuggling to summon any person whose attendance he considers necessary either to give evidence or to produce a document or thing in an enquiry in connection with the smuggling of any goods and such person shall be bound to state the truth and produce that document or thing and would be liable to prosecution if he made a false statement.

22. A reading of Section 167(8) and the related provisions indicates that proceedings for confiscation of contraband goods are proceedings in rem and the penalty of confiscation under the first part of the entry in column (3) of clause (8) of the Schedule, is enforced against the goods irrespective of whether the offender is known or unknown. But, imposition of the other kind of penalty, under the second part of the entry in column (3), is one in personam; such a penalty can be levied only on the "person concerned" in any offence described in column (1) of the clause.

23. Goods found to be smuggled can, therefore, be confiscated with out proceeding against any person and without ascertaining who is their real owner or who was actually concerned in their illicit import.

24. Section 168 empowers an officer of the customs or anti smuggling staff to seize any thing liable to confiscation.

25. Section 178-A provides for burden of proof. It says :

> (1) Where any goods to which the section applies are seize under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized;
>
> (2) This section shall apply to gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and any other goods which the central Government may, by notification in the official Gazette, specify in this behalf;
>
> (3) Every notification issued under sub-section (2) shall be laid before both houses of Parliament as soon as may be after it is issued.

26. Large scale smuggling of gold or other goods into India may pose a threat to the economic and fiscal interests and policies of the state. Such illicit trade is often carried on by organized international smugglers in the secrecy of the under world. The more it is organized, the less are the chances of its detection, and greater the difficulty of proving the offence relating thereto. Laws have therefore been enacted in most countries, which mark departure in matters relating to smuggling, from the general principle of penal law, viz., that it is for the state of its Department to prove the offence against the accused or the defendant. Thus in England, section 290(2) of the Customs and Excise Act, 1952 Provides that where in any proceeding relating to Customs or Excise any questions aries as to the place from which any goods have been brought or as to whether or not any duty has been paid or any goods have been lawfully imported, etc., then burden of proof shall lie upon the other party to the proceeding. In India, Parliament inserted section 178-A by the Amending Act 10 of 1957, but it did not, in its wisdom, go as far as section 290(2) of the English Act. Section 178-A in terms applies to "gold gold manufacture, diamonds and other precious stones, cigarettes and cosmetics." With regard to these specified goods, if seized under this Act in the reasonable belief that they are smuggled goods, the burden of proof that they are not such goods shall be on the person from whose possession they are seize. But with regard to any other goods the rule in sub-section (1) of section 178-A would not apply unless the Central Government had specially applied the same by notification in the Official Gazette. It is common ground that at the material time, no such notification applying the section to the categories of the goods in questions had been issued. In respect of such goods the provisions of the Evidence Act and the code of criminal procedure, do not, in terms govern the onus of proof in proceedings under section 167 (8) of the Act. In conducting these penal proceedings, therefore, the collector of customs to be guided by the basic canons of jurisprudence and natural justice.

27. With the above prefatory remarks, we now advert to the contentions canvassed before us.

28. Mr. Sanghi, learned counsel for the appellants, has advanced these arguments :

> (a) Bhoormull had no locus standi to invoke the extraordinary jurisdiction of the High Court under Articles 226 of the constitution because there was not even prima facie evidence to show that at the time of seizure, he was in owner ship or juridical possession of the goods;

(b) The onus of proving the goods to be smuggled goods that initially lay on the Department, stood sufficiently discharged by the inevitable inference arising out of the totally of the circumstances in this case, which were appraised by the collector in the light of the conduct of Baboothmull and Bhoormull, who gave conflicting and incredible explanations as to how they had come by these goods;

(c) The source from which and the circumstances in which Bhoormull or Baboothmull acquired these goods, were facts especially within their knowledge and on the principle underlying section 106, Evidence Act, these facts had to be proved by them. They deliberately failed to disclose those facts had to be proved by them. They deliberately failed to disclosed those facts or to give the necessary particulars of the persons from whom the goods were allegedly purchased, although such information was repeatedly requisitioned from Bhoormull by the collector, and they were duty bound under section 171-A to disclose it. This contumacious conduct of Baboothmull and Bhoormull strongly pointed towards the conclusion that the goods were smuggled stocks, and in that sense, the inference arising from the circumstances had sifted the onus on to Bhoormull to prove to the contrary. (In this connection, reliance has been placed upon Issardas Daulat Ram v. the union of India ((1962) Supp 1 SCR 358 : AIR 1966 SC 1867 : 1966 Cri LJ 1507) and M/s. Kanungo and Co. v. Collector of Customs (Calcutta) ((1973) 2 SCC 438 : 1973 SCC (Cri) 846).

(d) The order of the collector did not suffer from any apparent error or defer of jurisdiction. His order was based on an appraisement of the circumstantial evidence before him and was consistent evidence before him and was consistent with the rules of natural justice. He had given the fullest opportunity to the respondent to put forth his case and had issued two show-cause notices to him through his Solicitors. The Division Bench of the High Court exercising jurisdiction under Article 226 was not competent to go to the questions of the adequacy of that evidence, and act as if it were a court of appeal.

29. Mr. Ramamurthi, learned Counsel for the respondent, contends in reply, that all proceedings were conducted by the collector on the assumption that all proceedings were conducted by the collector on the assumption that at no stages, before the High Court an objection was taken that he had no locus standi to maintain in writ petition, because he had no interest in the confiscated goods, and consequently, this objection should be entertained for the first time in this court. Learned Counsel further submits that proceedings of confiscation being penal in nature, the burden was on the Department to show by cogent and convincing evidence that the goods had been illicitly imported into India and that no part of this burden could be shifted to the person claiming the goods. It is emphasised that in the present case, no evidence whatever was produced by the Department to show by cogent and convincing evidence that the goods had been illicitly imported into India and that no part of this burden could be shifted to the person claiming the goods. It is emphasised that in the presents case, no evidence whatever was produced by the Department to show that the goods in questions were smuggled good. The collector's order - proceeds the argument - calling upon Bhoormull to prove that he had purchased these goods in the normal course of business was contrary to the law laid down by this Court in Amba Lal v. Union of India ((1961) 1 SCR 933 : AIR 1961 SC 264 : (1961) 1 Cri LJ 326). Reference has also been made to several decisions of the High Courts, but most of them turn on their own facts and do not elucidate the principle beyond what was laid down in Amba Lal's case.

30. It cannot be disputed that in proceeding for imposing penalties under clause (8) of section 167, to which section 178-A does not apply, the burden of providing that goods are smuggled goods is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But, in appreciating its scope and the natural of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and - as Prof. Brett felictously puts it - "all exactness is a fake." El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not required the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered - to use the word of Lord Mansfield in Blatch v. Archer ((1774) 1 Cowp 63, 65 : 98 ER 969) - "according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted." Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

32. Smuggling is calendestine of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the persons concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an advertise inference of fact may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the prove him guilty. As pointed out by Best (in 'Law of Evidence ' 12th Edn. Article 320, page 291), the" presumption of innocence is, no doubt, presumption juris; but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property, "through the letter is only a presumption of fact. Thus the burden on the such presumptions of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden, to discharge which, very slight evidence may suffice.

33. Another point to be noted is that the incidence, extent and nature of the burden of proof in proceedings for confiscation under the first part of the entry in the 3rd column of clause (8) of Section 167, may not be the same as in proceedings when the imposition of the other kind of penalty under the second part of the entry is contemplated. We have already alluded to this aspect of the matter. It will be sufficient to reiterate that the penalty of confiscation is a penalty of in rem which is enforced against the goods and the second kind of penalty is one in personam which is enforced against the person concerned in the smuggling of the goods. In the case of the former, therefore, it is not necessary for the customs Authorities to prove that any particular person is concerned with their illicit important or exportation. It is enough if the Department furnishes prima

facie proof of the goods being smuggled stocks. In the case of the latter penalty, the Department has to prove further that the person proceeded against was concerned in the smuggling.

34. The propriety and legality of the Collector's impugned order had to be judge in the light of the above principles.

35. It is not correct to say that this is a case of no evidence. While it is true that no direct evidence of the illicit important of the goods was adduced by the Department, it had made available to the Collector several circumstances of a determinative character which coupled with the inference arising from the dubious conduct of Baboothmull, and Bhoormull, could reasonably lead to the conclusion drawn by the collector, that they were smuggled goods. These circumstances have been set out by us earlier in this judgment. We may recapitulate only the most salient among them.

36. The importation of such goods into India had been banned several years earlier, i.e. of some of them in 1957 and of others in 1960. These goods, without exception, were all of foreign origin. They were of large value - of over Rs. 12,000. They were all lying packed as if they had been freshly delivered, or were ready for despatch to a further destination. They were not lying exhibited for sale in the show cases of the shop. Baboothmull from whose apparent custody or physical procession, they were seize disclaimed not only their ownership but also all knowledge about the contest of the packages. He could not give a satisfactory account as to how these packages came into his shop. At first, he said that some next-door unknown broker had left them outside his shop. Some days later, he came out with another version viz, that one Bhoormull had left them there. Eight days after, one mysterious person who gave out his name as Bhoormull, laid claim to these goods. Despite repeated requisitions, Bhoormull did furnish any information regarding the source of the alleged acquisition of the goods. He never appeared personally before the collector. He remained behind the scenes. He did not give addresses or sufficient particulars of the brokers who had allegedly sold the goods to him on June 3. Whatever cryptic information was given by him, was also conflicting. Despite two show-cause notices, Bhoormull intransigently refused to disclose any further information. Apart from marking a bare claim, he did not furnish evidence of his ownership or even juridical possession of the goods. The totality of these circumstances reinforced by the inferences arising from the conduct of Baboothmull and Bhoormull, could reasonably and judicially lead one to conclude that these goods had been illicitly imported into Madras, a sea port.

37. Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt, then also, in our opinion that was not a good ground to justify interference with the collector's order in the exercise of the writ jurisdiction under Article 226 of the constitution. The function of weighing the evidence or considering its sufficiency was the business of the collector or the appellate authority which was the final tribunal of fact. "For weighing evidence drawing inferences from it ", said Birch, J in R. V. Madhub Chunder ((1873) 21 WR Cr 13, 19) "there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited." It follows from this observation that so long as the collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice, there would be no warrant for disturbing his finding under Article 226. The collector's order was not of this kind.

38. In the view that the initial onus of proof on the Department can be sufficiently discharged by circumstantial evidence, we are supported can be sufficiently discharged by circumstantial we are supported by the decision of this court in Issardas Daulat Ram's case (supra). There, on September

14, 1954, that is, long before the insertion of section 178-A in the Act, a quantity of gold to a refinery in Bombay was sent for the purpose of melting. The customs Authorities seized this gold when it was being melted. The gold was found to be foreign origin and had been imported into India in contravention of the Foreign Exchange Regulations Act, 1947. The Collector of customs confiscated it under section 167(8) of the Act. The legality of confiscation was challenged by a petition under Article 226 of the confiscation before the High court, on the ground that there was no evidence before the collector to show that the gold had imported into India after restrictions had been imposed in March, 1947, on its importation. The High Court rejected this contention and dismissed the petition. The same argument was advanced before this court in appeal by special leave. This court also negatived this contention. While conceding that there was no direct evidence that the gold had been smuggled after March, 1947, it was held that a finding to that effect could be reached by referring to the conduct of the appellant in connection with (a) the credibility of the story about the purchase of this gold from three parties, (b) the price at which the gold was stated to have been purchased which was less than the market price and (c) the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added so as to licit gold found in the market.

39. The rule in Issardas Daulat Ram's case (supra) was reiterated with amplification in M/s. Kanungo & Co.'s case (supra). Therein, the appellant was a firm carrying on business as dealer, importer and repairer of watches. On a search of the firm's premises on October 17, 1959, the customs Authorities seize 390 watches out of which 250 were confiscated on the ground that they had been illicitly imported into India. The firm's petition under Article 226 of the constitution was allowed by a learned single Judge of the High Court and the order of confiscation was quashed on the ground that customs Authorities had confiscation prove illicit importation of the watches. On appeal by the Department, the Division Bench of the High Court reversed the decision of the single Judge with these observations :

The watches were seized from the possession of the Respondent No. 1 (appellant) who had not obtained a licence or a customs clearance permit for importation of the same. They were of foreign mark and must have been imported across the customs frontier. The explanations offered by the Respondent No. 1 regarding its coming into possession of the same between 1956 and 1957 were found upon enquiries by the customs, authorities, to be false; the result of these enquiries were communicated to the Respondent no. 1 who was thereafter heard by the adjudicating officer. Yet no attempt was made by the Respondent No. 1 to substantiate its claim regarding lawful importation of the watches ..... The customs authorities came to the conclusion that the said 280 watches were illegally imported and thereupon made an order for confiscation of the same. It is not for this court, in exercise of its jurisdiction under Article 226 of the constitution to revise, set aside or quash this order, in the facts of this case.

40. In appeal on certificate, it was contended before this court that there was no evidence that these watches had not been illicitly imported into India and that the impugned order wrongfully placed the burden on the appellants. Sikri, C.J. speaking for the court, repelled this contention thus : (at SCC p. 442, paras 13 to 15)

There is also no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does it that it refers to the evidence on the record which militates against the version of the appellant and then states that the appellant had not been able to meet the inferences arising therefrom ..... In our opinion, to the High court was right in holding that the burden of proof had shifted on to the appellant after the customs Authorities had informed the appellant of the result of the enquiries and investigations.

This also disposed of the first point. As we have said, the burden was on the customs Authorities which they discharged by falsifying in many particulars the story put forward by the appellant ..... It cannot be disputed that a false denial could be relied on by the customs Authorities for the purpose of coming to the conclusion that the goods had been illegally imported.

41. In the case before us, the circumstantial evidence suggesting the inference that the goods were illicitly imported into India, was similar and reasonably pointed towards the conclusion drawn by the collector. There was no violation of the rules of natural justice. The collector had given the fullest opportunity to Bhoormull to establish alleged acquisition of the goods in the normal course of business. In doing so, he was not throwing the burden of proving what the Department had to establish, on Bhoormull. He was simply giving him a fair opportunity of rebutting the first and the foremost presumption that arose out of the tell-tale circumstances in which the goods were found, regarding their being smuggled goods, by disclosing facts within his special knowledge.

42. Amba Lal's case (supra) strongly relied upon by Mr. Ramamurthi, is clearly distinguishable on facts. There, Amba Lal was originally a resident of Pakistan. He migrated into India on the partition of the Indian sub-continent before March, 1948, when the Customs barrier between India and Pakistan was raised for the first time. The department did not lead any evidence, circumstantial or direct, that the goods seized from Amba Lal gave plausible explanation that he had brought those goods along with him in 1947, when there were no restriction. The Department however, tried to take advantage of certain alleged discrepancies in the statements of Amba Lal which recorded in English. Amba Lal did not know English. He was not supplied with copies of those statements, nor allowed to inspect them. This court, therefore, held that the Department was not entitled to rely on those discrepancies. Quoting from Sham Nath Mehara v. State of Ajmer (1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri LJ 794), the court said that section 106, Evidence Act "cannot be used to undermine the well established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts". It was added :

If Section 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked.

43. If we may say so with great respect, it is not proper to read into the above observations than what the context and the peculiar facts of that case demanded. While it is true in criminal trials to which the Evidence Act, in terms, applies, this section is not intended to relive the prosecution of the initial burden which lies on it to prove the positive facts of its own case, it can be said by way of generalisation that the effect of the material facts being exclusive or especially within the knowledge of the accused, is, that it may, proportionately with the gravity or the relative of the issues at stake, in some special type of cases, lighten the burden of proof resting on the prosecution. For instance, once it is shown that the accused was travelling without a ticket, a prima facie case against him is proved. If he had such a ticket and lost it, it will before him to prove this fact within his special knowledge. Similarly, if a person is proved to be in recent possession of stolen goods, the prosecution will be deemed to have established the charge that he was either the thief or had received those stolen goods knowing them to be stolen. If his possessions was innocent and lacked the requisite incriminating knowledge, then it will be for him to explain or establish those facts within his peculiar knowledge, failing which the prosecution will be entitled to take advantage of the presumption of fact arising against him, in discharging its burden of proof.

44. These fundamental principles, shorn of technicalities as we have discussed earlier, apply only in a board and pragmatic way to proceeding under Section 167(8) of the Act. The broad effect of the

application of the basic principles underlying section 106 Evidence Act to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduced only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the facts sought to be proved. Amba Lal's case (supra) was a case of no evidence. The only circumstantial evidence viz., the conduct of Amba Lal in marking conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal, viz., that he was an immigrant from Pakistan and had come to India in 1947 - before the customs barrier was raised - bringing alone with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case thus stands on its own facts.

45. The present case is in line with the decisions in Issardas Daulatram v. Union of India (supra) and M/s. Kanungo & Co. v. collector of customs (supra).

46. For all the foregoing reasons, we are of the opinion that the learned judges of the High Court were in error in reversing the judgment of the learned single judge and in quashing the order of the collector of customs. We, therefore, allow this appeal, set aside the judgment under appeal and dismiss the writ petition. In view of the law point involved we would leave the parties to bear their own costs.

</html