BOMBAY HIGH COURT

Valimahomed Gulamhussain Sonavala

Vs.

C.T.A. Pillai

Misc. Appln. No. 214 of 1959

(K.T. Desai, J.)

18.12.1959

ORDER

K.T. Desai, J.

1. The Petitioners carry on business in bullion and are licensed to refine precious metals. They have filed the petition for the issue of a writ of certiorari or other appropriate writ, direction or order under Article 226 of the Constitution against the Additional Collector of Customs and the Union of India for quashing and setting aside the order, dated 13th June 1959, passed by the Additional Collector of Customs confiscating certain quantity of gold and imposing fines in lieu of such confiscation. They have also prayed for a writ of mandamus or other appropriate writ, direction or order under Article 226 of the Constitution against the Additional Collector of Customs for restoring possession of the gold weighing 452 tolas and 17-1/2 vals belonging to the petitioners which has been seized.

2. The facts giving rise to the petition, briefly stated, are as follows : On 9th September 1957, 100 tolas of smuggled gold was seized from one Dina Mangtu, a sweeper employed by the Pakistan International Airways. He was interrogated. Whilst referring to previous transactions in which he was concerned, he admitted that he had brought a similar consignment containing gold from a Pakistan International Airways plane which had arrived from Pakistan on 7th September 1957 and that he had handed it over to one Julio Lobo. Julio Lobo when questioned admitted having received the said consignment. Julio Lobo stated that it consisted of 100 tolas of gold. He further stated that this gold was sold by him to a goldsmith by name Bansilal Sagarmal Porwal. Bansilal Sagarrnal Porwal in his turn admitted having purchased this gold. Bansilal Sagarmal Porwal stated that he got the said gold melted adding base metal to it and converted it into a 'patla' or bar bearing No. M-1565, which weighed 103 tolas and 29 vals. He sold this bar of gold to one Choksi Chimanlal Purshottam. Choksi Chimanlal Purshottam admitted the purchase of this gold and stated that he had sold the same to the Petitioners. The Petitioners admitted having

purchased the said gold bar bearing No. M-1665 on 11th September 1957. It is the case of the Petitioners that they were the purchaser for value of this gold without notice of the fact that the gold was smuggled, and that they purchased this gold in the ordinary course of business. The Petitioners carry on business on a large scale. They state that their purchase of gold for the year 1957 aggregated to nearly Rs. two crores. On the same day the Petitioners had purchased two other gold bars from the said Choksi Chimanlal Purshottam weighing 101 tolas and 17 vals and 42 tolas and 13 vals respectively. On that day they had also purchased one gold bar weighing 250 tolas and 31-1/2 vals from one Vithaldas Nanji. The Petitioners received on that day from their customers Messrs. Gokuldas Mohanlal and Co. one gold bar bearing No. B/M 1646 weighing 103 tolas and 38 vals of about 90 fineness for the purpose of refining. They had also received on that very day from their customers Messrs. Mohanlal Bhagwandas Choksi and Co. one gold bar bearing No. B/M 1584 weighing 144 tolas and 6 vals of 94-23 fineness for the purpose of refining. The Petitioners state that for the purpose of refining gold the minimum quantity of gold that is required for the crucible in their refinery is 600 tolas. The Petitioners sent to their refinery all the aforesaid bars of gold including the bar of gold which they had purchased from Choksi Chimanlal Purshottam which contained the smuggled gold. The total quantity of gold thus sent to the refinery was 746 tolas and 13-1/2 vals. During the process of refining 67 tolas and 16-1/2 vals were found to consist of impurities. Consequently the net weight of the refined gold was 678 tolas and 37 vals. On 11th September 1957 the Petitioners sent the bar weighing 678 tolas and 37 vals to the refinery of the Bombay Bullion Association for assaying and marking. The said Association after assaying and marking handed over to the Petitioners bars of gold weighing in the aggregate 678 tolas and -1/2 vals is some gold was taken out for sampling and some was returned in 'rawali'. Out of the aforesaid bars, the petitioners on the same day returned to Messrs. Gokuldas Mohanlal and Co. one bar bearing No. B/M 1678 weighing 92 tolas 8 vals and to Messrs. Mohanlal Bhagwandas Choksi and Co. one bar bearing No. B/M 1678 weighing 133 tolas and 13-1/2 vals. Thereafter two bars of gold weighing 452 tolas and 17-1/2 vals remained with the petitioners.

3. On 12th September 1957 the officers of the Central Excise Department carried out a raid in the petitioners' Pedhi and seized the aforesaid two bars of gold weighing 452 tolas and 17-1/2 vals. They also seized the aforesaid bar of gold weighing 133 tolas and 13-1/2 vals from Messrs. Mohanlal Bhagwandas Choksi and Co. They seized a bar of gold weighing 109 tolas and 32 vals from Messrs. Gokuldas Mohanlal and Co. the same being the bar into which the aforesaid bar weighing 92 tolas and 8 vals was converted.

4. On 21st November 1957 the Petitioners, the said Gokuldas Mohanlal and Co. and the said Mohanlal Bhagwandas Choksi and Co. were called upon by the Collector of Central Excise, Bombay, to show cause why the aforesaid gold bullion should not be confiscated under Section 167 (8) of the Sea Customs Act. On 26th November 1957 the Petitioners' attorneys requested the Collector of Central Excise, Bombay, to furnish to them certified copies of the statements of witnesses which were proposed to be relied upon by the Collector of Central Excise, Bombay.

On 7th January 1958 a reminder was sent in this connection to the Collector of Central Excise, Bombay. On 10th March 1958, the Collector of Central Excise sent three statements, dated 11-9-1957, 13-9-1957 and 14-10-1957 of the said Bansilal Sagarrnal Porwal along with other statements. On 30th April 1958 the petitioners' attorneys addressed a letter to the Collector of Central Excise, Bombay, complaining that the statements of Dina Mangtu and Julio Lobo had not been furnished. By that letter they requested the Collector of Central Excise to keep the said Bansilal Sagarmal Porwal and the said Choksi Chimanlal Purshottam present for cross-examination at the hearing of the matter to enable the petitioners to test the veracity or otherwise of the statements deposed to by them. On 12th May 1958, the Collector of Central Excise wrote to the Petitioners' attorneys stating that their request for cross-examination of witnesses could not be granted and that the same was "in keeping with the practice followed in departmental adjudication of Customs Cases". The Petitioners, the said Mohanlal Bhagwandas and Co. and the said Gokuldas Mohanlal and Co. sent their written explanations and their representatives were given a personal hearing. As the gold was smuggled through the air port which was within the jurisdiction of the Additional Collector of Customs, the case papers were transferred to him for adjudication according to law.

5. The Additional Collector of Customs gave a personal hearing to the parties. At the time of the personal hearing before the 1st respondent, it was represented to him that the statements of Dina Mangtu and Julio Lobo had not been furnished to the parties concerned and that the same seriously prejudiced the interest of the owners of gold. By his letter dated 25th/26th May 1959 the 1st respondent sent the relevant extracts of those statements in so far as they referred to the gold under seizure. By that letter the petitioners, Mohanlal Bhagwandas and Co. and Gokuldas Mohanlal and Co. were informed that their further submissions should be made within one week from the date of the issue of that letter, failing which the case would be adjudicated without any further reference. On 13-6-1959, the Additional Collector of Customs passed an order as follows :

> "I accordingly order that the smuggled gold bullion viz. 103 tolas 29 vals out of the seized bars of gold shall be confiscated under Section 167(8). However, having regard to the circumstances of the case, I give the owners of the bars the option under Section 183 ibid to pay the following fines in lieu of such confiscation :

(a) 2 bars seized from M/s. Valimohamed Gulamhusain Sonavala ... Rs. 8,000
(b) 1 bar seized from M/s. Mohanlal Bhagwandas Choksi and Co. ... Rs. 2,350
(c) 1 bar seized from M/s. Gokuldas Mohanlal and Co. ... Rs. 1,650

It is the validity of this order which has been challenged by the petitioners in the present petition.

6. There are various grounds advanced in support of the petition. It is complained that the statements made by Bansilal Sagarmal Porwal, Dina Mangtu and Julio Lobo have been relied upon by the 1st respondent without any opportunity being given to the petitioners to cross-

examine them. It is admitted that the statements of these three persons viz. Bansilal Sagarmal Porwal, Dina Mangtu and Julio Lobo were taken prior to the seizure of gold from the hands of the petitioners. At the date when these statements were made, no inquiry had been instituted against the petitioners. The petitioners claim that if these statements are to be used against them, they must have an opportunity of cross-examining the persons who made these statements and that as such opportunity was denied to them, the order is liable to be set aside as being an order passed without the observance of the rules of natural justice.

7. It is well settled, and it is not disputed, that proceedings under the provisions of Section 167(8) of the Sea Customs Act are quasi-judicial proceedings. There are two decisions of the Supreme Court which have been relied upon for the purpose of showing that the rules of natural justice in quasi-judicial proceedings require that an opportunity should be furnished to a person of cross-examining those who have made statements which are to be used against him. In the case of *Union of India v. T. R. Varma, reported in*[1] it has been observed at p. 507 (of SCR) as follows :

> "Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co. v. New Suwarna Transport Co*[2]*.,* where this question is discussed".

8. In the case of the *Phulbari Tea Estate v. Its Workmen, reported in*[3] the question arose whether the principles of natural justice had been observed in the case of the dismissal of a workman. The case of the workman was taken up by the Assam Chah Karmachari Sangh, a registered trade Union, and a reference was made by the Government of Assam to the Industrial Tribunal on the question whether the dismissal of the workman was justified. One of the reasons given by the Tribunal for holding that the dismissal was not justified was that proper procedure had not been followed. In the course of his judgment, Wanchoo, J., who delivered the judgment of the Supreme Court observes at p. 1113 as follows :

> "The Manager's test money shows that the witnesses who were present at the enquiry

were not examined in the presence of Das. It also does not show that copies of the statements made by the witnesses were supplied to Das before he was asked to question them. Further his evidence does not show that the statements which had been recorded were read over to Das at the enquiry before he was asked to question the witnesses. It is true that the statements which were recorded were produced on behalf of the company before the Tribunal; but the witnesses were not produced so that they might be cross-examined even at that stage on behalf of Das. The question is whether in these circumstances it can be said that an enquiry as required by principles of natural justice was made in this case. We may in this connection refer to 1958 SCR 499 . That was a case relating to the dismissal of a public servant and the question was whether the enquiry held under Article 311 of the Constitution of India was in accordance with the

[1]1958 SCR 499 [3] AIR 1959 SC 1111
[2](AIR 1957 SC 232)

principles of natural justice. This Court speaking through Venkatarama Ayyar, J., observed as follows in that connection at p. 507 : (of SCR) : x x x"

Then follow some of the remarks which I have quoted earlier. The learned Judge thereafter proceeds to state as follows :

"It will be immediately clear that these principles were not followed in the enquiry which took place on March 12, inasmuch as the witnesses on which the company relied were not examined in the presence of Das. It is true that the principles laid down in the case are not meant to be exhaustive."

9. In connection with the application of the principles laid down by the Supreme Court to an inquiry in respect of an offence under Section 167 (8) of the Sea Customs Act, there is a decision of a Division Bench of this Court, consisting of Mr. Justice Tambe and Mr. Justice Badkas, reported in *Pukhraj Champalal Jain v. D. R. Kohli*[4]. At page 1243 of the report, it has been observed as follows :

"The inquiry held under Section 167(8) is a quasi-judicial inquiry : *Sewpujanrai. I. Ltd. v. Collector of Customs*[5], and respondent No. 1 was bound to follow the principles of natural justice in holding the inquiry. These principles are in the words of their Lordships of the Supreme Court in (1958) SCR 499 at p. 507 : (AIR 1957 Supreme Court 882 at p. 885) : '..... stating it broadly etc.'" The words commencing with the words 'Stating it broadly' to which I have already made a reference have been quoted.

10. My attention was also drawn to a very recent unreported decision of Mr. Justice K. K. Desai delivered on *Fidahussein Ghadially v. C. T. A. Pillai*[6]. That was a case also under Section 167 (8) of the Sea Customs Act. In that case, the Sea Customs Authorities sought to rely upon a report

given by an expert in respect of the goods which were the subject-matter of the inquiry in that case and which had been ultimately confiscated. The Petitioner in that case desired to cross-examine the expert in connection with the report which the expert had made, but that opportunity was not given to him. The learned Judge after quoting the observations of the Supreme Court in Varma's case referred to above held that the rules of natural justice had not been observed and the impugned order was set aside. My attention was also called to another unreported decision of the same Judge delivered on *Jal Hormusji Khajotia v. T. C. Sheth*[7]. That was also a case under the Sea Customs Act, the inquiry being held in respect of an offence under the provisions of Section 167(8) of that Act. In that case however, the statements in respect whereof a complaint was made by the petitioners that they had no opportunity of cross-examining the person who made them, were statements of persons to whom a reference had been made by the petitioners themselves so that the investigating officer may inquire of them about the case. In the words of the learned Judge, "the persons who made the statements were indicated by the petitioners as persons from whom the department should gather information which would prove truth of the case of the

[4]61 Bom LR 1230 [6]6th November 1959 in Misc. Petition No. 152 of 1959

[5] AIR 1958 SC 845 (849) [7]8th October 1959 in Misc. Application No. 1 of 1959

petitioners." The learned Judge held that they were not the witnesses of the department and that they were going to be, if at all, the witnesses of the petitioners in that case. The learned Judge did not in that case think it right to set aside the order not because he did not affirm the principle that under the rules of natural justice opportunity should be given to a person to cross-examine the persons who have made statements against him but on the ground that that principle was not applicable to the facts of that case. The learned Judge in that case was seeking to affirm the principles underlying Section 20 of the Evidence Act which lays down that statements made by a person to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

11. In the light of these authorities, the matter, so far as I am concerned, would not have admitted of any doubt, but I am referred by the learned counsel for the respondents to two decisions of this very Court where observations have been made having a different effect. The first decision is the one reported in *Mahadev Ganesh v. Secy. of State for India*[8]. It is a decision of the then Chief Justice Sir Norman Macleod and Mr. Justice Shah. It was a case under the Sea Customs Act. The case related to the confiscation of the goods under the provisions of that Act. In the course of his judgment the learned Chief Justice observes at p. 247 (of Bom LR) : (at pp. 30 and 31 of AIR), as under :

> "It is admitted that the Sea Customs Act contains no provision with regard to the adjudication of confiscation and penalties which can be made by the Customs Officers under Section 182. Therefore, the Customs Officers must proceed according to general principles, which are not necessarily legal principles, for the purpose of arriving at a conclusion when such inquiries as the present one, are instituted. It appears to me, after perusing the papers, which were before the Collector of Customs, and which I presume were taken in accordance with the ordinary procedure, that various statements were

> recorded by the Sarkarkun, including the statement of Ganesh. There is also a long application on behalf of Ganesh which has been placed before us, but which does not appear in the paper book, and I have no doubt that the Collector who is not bound to adjudge on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code, dealt with the various statements before him in a careful and judicial manner.

The learned Judge has referred to the case of the *Local Govt. Board v. Arlidge*[9], in which the Court said 'that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation'; and again in the *Board of Education v. Rice*[10], the Court said: 'They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view'. It is obvious from the record in this case that the plaintiff had ample opportunity to correct or contradict any statement prejudicial to his view which had been recorded ....."
The Court upheld the order of the Court below which had held that the plaintiff could not legitimately urge that witnesses were not examined in his presence or that he was not

[8]24 Bom LR 245 [10](1911) AC 179, 182
[9](1915) AC 120 (138)

allowed to examine them and consequently the proceedings were illegal.

12. The second judgment is an unreported judgment of a Division Bench of this Court consisting of Chagla, C.J., and Tendolkar, J., delivered on *S. Venkatesan, Dy. Collector of Customs, Bombay v. Shah Trikamdas Damji*[11] That was also a case under Section 167 (8) of the Sea Customs Act. In that case, Mr. Justice S. T. Desai, who dealt with the matter in the first instance, had set aside the order of the Deputy Collector of Customs confiscating the goods of the petitioners on the ground that the order was passed by the Deputy Collector of Customs without hearing the petitioners. In the course of his judgment, Chagla, C.J., observes as follows :

> "Now, when one talks of rules of natural justice, one does not refer to procedure or to technicalities of procedure. The rule of natural justice which has got to be observed by all judicial and quasi-judicial bodies is that a party should not be condemned unheard, that he should know what the charge against him is, that he should be heard in his defense, that he should be given an opportunity to lead evidence and he should also be given an opportunity to test the materials which are before the adjudicating authority. If there is a departure from any of these requirements, then undoubtedly the Court would say that a proper opportunity was not given to the party to defend himself or to show cause against the charge made.

Applying that test to the facts of this case, can it be said that the petitioner was condemned

unheard, that the order of confiscation was passed against him without the authority passing that order, knowing what the defense of the petitioner was and what he had to say in respect of the charge leveled against him? Now, a written representation, as already pointed out, was submitted to the Assistant Collector and this written representation was before the Deputy Collector. x x x Therefore, the order of the Deputy Collector was passed after taking into consideration the written representation of the petitioners and also the letter of the 14th of April, which sets out what transpired at the interview between the Petitioners and the Assistant Collector, x xx xx Now, in the first place, as this Court has often laid down, the rule of natural justice which confers upon a party the right to be heard does not confer upon him the wider right of being heard orally. A written representation submitted by a party gives full opportunity to that party to be heard in his defense. Whether the party should be orally heard or not is a matter of procedure. In a Court of law undoubtedly a party has a right to be orally heard. The law may require that a certain tribunal should hear parties orally or a tribunal may frame its own rules of procedure which would give a right to a party to be orally heard. But in this case it is not suggested that there is any provision of law which entitles the petitioner to be heard orally. The section under which the order is made is Section 182 of the Sea Customs Act which talks of adjudication by the Excise Officer and by reason of that section undoubtedly the order passed by the Deputy Collector becomes a quasi-judicial order. Therefore there is an obligation upon the Deputy Collector to act judicially and by reason of that obligation he is bound to hear the petitioner...."

13. This decision has been very strongly relied upon for the purpose of showing that even

[11]5th October 1956 in Appeal No. 75 of 1956 (Misc. Appln. No. 184 of 1956)

the right to be heard orally was not available to a person where the inquiry was being held under the provisions of the Sea Customs Act which may result in the confiscation of goods. It is urged that if there is no right to a personal hearing, there could not possibly be a right to have the evidence of witnesses recorded in the presence of the party concerned and to cross-examine persons who have made statements in the course of the inquiry.

14. The learned counsel for the respondents also relies upon some of the observations in *A. K. Gopalan v. State of Madras, reported in*[12] That was a case under the Preventive Detention Act and there was a constitutional challenge to some of the provisions contained in that Act. The learned counsel for the respondents relied upon the observations of Kania, C.J., in that case appearing at p. 124 (of SCR) , where the learned Judge observes as follows :

> "Again I am not prepared to accept the contention that a right to be heard orally is an essential right of procedure even according to the rules of natural justice. The right to make a defence may be admitted, but there is nothing to support the contention that an oral interview is compulsory. In (1915) AC 120, the respondents applied to the Board constituted under the Housing Act to state a special case for the opinion of the High Court, contending that the order was invalid because (1) the report of the Inspector had been treated as a confidential document and not been disclosed to the respondent, and (2)

> because the Board had declined to give the respondent an opportunity of being heard orally by the person or persons by whom the appeal was finally decided. The Board rejected the application. Both the points were urged before the House of Lords on Appeal. Viscount Haldane, L. C. in his speech rejected the contention about the necessity of an oral hearing by observing "But it does not follow that the procedure of every tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main, the procedure must conform. But what that procedure is to be in detail must depend on the nature of a tribunal." In rejecting the contention about the disclosure of the report of the Inspector, the Lord Chancellor states : "It might or might not have been useful to disclose tin's report, but I do not think that the Board was bound to do so any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to. x x I do not think the Board was bound to hear the respondent orally provided it gave him the opportunities he actually had....."

That being a case under the provisions of the Preventive Detention Act, 1950, the learned Chief Justice of India thereafter proceeds to observe as follows :

> "A right to lead evidence against facts suspected to exist is not essential in the case of preventive detention. Article 22 (6) permits the nondisclosure of facts. That is one of the clauses of the Constitution dealing with fundamental rights. If even the non-disclosure of facts is permitted, I fail to see how there can exist a right to contest facts by evidence and the non-inclusion of such procedural right could make this Act invalid."

[12]1950 (1) SCR 88

In the case reported in AIR 1957 Supreme Court 232, it has been observed by the Supreme Court at p. 236 as follows :

> "x x x it has got to be observed that the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the rules themselves must vary."

In that case, a question had arisen in connection with a police report which had been furnished to the Appellate Authority under the Motor Vehicles Act in connection with applications for the issue of a stage carriage permit to run transport buses on certain routes. The appellate authority had read out the report to the parties. The order of the Appellate Authority was challenged on the ground that the report had not been shown to the petitioner and "no real and effective opportunity to deal with the report had been afforded to the petitioner". In dealing with the matter, Sinha, J., observes as follows at page 236 :

> "Thus the Motor Vehicles Act and the rules framed thereunder with particular reference to

> the Regional Transport Authority and the Appellate Authority do not contemplate anything like a regular hearing in a Court of justice. No elaborate procedure has been prescribed as to how the parties interested have to be heard in connection with the question, who is to be granted a stage carriage permit....."

The learned Judge thereafter observes at page 237 as follows :

> "Hence, in our opinion, there was nothing in the rules requiring a copy of the police report to be furnished to any of the parties, nor was there any circumstance necessitating the adjournment of the hearing of the appeal, particularly when no request for such an adjournment had been made either by the first respondent or by any other party....."

15. Having regard to the decisions referred to above, I have to consider by which of these decisions I should feel myself bound. The decision in Gopalan's case was given in the context of the Preventive Detention Act, 1950, where the authorities concerned were entitled to act on facts suspected to exist. I have to consider the principles of natural justice as applicable to quasi-judicial proceedings in connection wherewith the observations of the Supreme Court in the two later decisions of the Supreme Court reported in 1958 SCR 499 (Varma's case) and AIR 1959 Supreme Court 1111, are more pertinent. The decision reported in 24 Bom LR 245 , and the unreported judgment of Chagla, C.J., and Tendolkar, J., dated 5-10-1956 were given before the aforesaid two decisions of the Supreme Court. There is the later judgment of a Division Bench of this Court reported in 61 Bom LR 1230, after the decision in Varma's case, 1958 SCR 499 , was given by the Supreme Court and I feel myself, in the midst of the conflict of authorities, bound by this judgment. That is a judgment which is later in date and is a judgment delivered after the Supreme Court had expressed itself in connection with the principles of natural justice liable to be observed by quasi-judicial tribunals.

16. In this view of the matter, I must hold that in the case before me, the principles of natural justice have not been observed inasmuch as the statements of the three witnesses Bansilal Sagarmal Porwal, Dina Mangtu and Julio Lobo taken in the absence of the petitioners were relied upon without producing the witnesses for cross-examination and the right of cross-examination has been in terms denied.

17. It is next urged by the learned Advocate-General, who appears for the petitioners, that the principles of natural justice have not been observed in this case, inasmuch as the well-settled rule of prudence, which has now become a rule of law, that evidence of an accomplice cannot be relied upon against an accused unless corroborated in material particulars has not been observed. It has been strenuously urged on behalf of the respondents that this principle has no application to proceedings before a quasi-judicial tribunal. In the case before me, the petitioners are innocent purchasers for value of gold without notice that the gold was tainted with the vice of smuggling. Proceedings under the Sea Customs Act in connection with an article resulting in the confiscation of that article are proceedings in rem. If gold is smuggled and it is traced in the hands of any

party, however, innocent, the same is liable to be seized and confiscated. In my view, the petitioners are in no sense liable to be regarded as persons who are accused of an offence and even if it was obligatory on a quasi-judicial tribunal to observe the rule referred to by the learned Advocate-General that rule has no application to the facts of this case. In this view of the matter, it is not necessary for me to determine whether this rule of prudence is liable to be observed by quasi-judicial tribunals in deciding matters according to the rules of natural justice.

18. The next point to be considered is in connection with the order actually passed. Four bars of gold have been seized and are still in the possession of the Additional Collector of Customs. Two out of the four bars belong to the petitioners, the third bar belongs to Mohanlal Bhagwandas Choksi and Co. and the fourth bar belongs to Gokaldas Mohanlal and Co. The two bars of the petitioners weigh 452 tolas and 17-1/2 vals, the bar belonging to Mohanlal Bhagwandas Choksi and Company weighs 133 tolas and 13-1/2 vals and the bar belonging to Gokuldas Mohanlal and Company which once weighed 92 tolas and 8 vals now with the subsequent addition of base metal weighs 109 tolas and 32 vals. Out of these four bars, the Additional Collector of Customs has sought to confiscate 103 tolas and 29 vals of gold, holding that the same is smuggled gold. He has not set out in the order how much quantity of gold he has confiscated from each bar. In his affidavit in reply to the petition, he states in paragraph 19 as follows :

> "I submit that the 1st respondent having held that out of the total quantity of about 694 tolas of gold which was seized, 103 tolas and 29 vals were smuggled gold, it was not possible for the 1st respondent to hold which part of the seized gold was smuggled as the whole quantity was mixed up together and separte identification of the smuggled gold was physically impossible. I submit that if the gold had changed its form on account of the action of the petitioners themselves, the adjudicating authority could hardly be blamed therefor nor does it alter the fact that the gold is smuggled gold. I submit that if the 103 tolas and 29 vals of gold was smuggled gold, the responsibility of mixing the same with the other gold was that of the petitioners and they cannot take advantage of their own wrong".

The first respondent has sought to confiscate the gold under the provisions contained in Section 167(8) of the Customs Act. That section provides as under :

> "If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction ..... such goods shall be liable to confiscation....."

Acting under this provision the first respondent has purported to confiscate 103 tolas and 29 vals of gold out of a total quantity of about 694 tolas of gold. Having seized a much larger quantity of gold, it would be his duty to separate the smuggled gold which he had confiscated from the unsmuggled gold and to return to the lawful owners the unsmuggled gold. Having realized the

impossibility of separating the smuggled gold from the unsmuggled one, he has retained all the quantity of gold and has given the option of payment of fine, which he was under an obligation to give under Section 183 of the Sea Customs Act, 1878, to all the three owners of the seized bars of gold and seems to have equitably distributed such fine. Section 183 of the Sea Customs Act provides as under :

> "Whenever confiscation is authorized by this Act, the officer adjudicating it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit".

The effect of the order passed by the first respondent appears to be that if Rs. 8,000/- were paid by the petitioners, then the smuggled gold which may have found its way in the two bars belonging to them would be released; if Rs. 2,350/- were paid by Messrs. Mohanlal Bhagwandas Choksi and Co. the smuggled gold which may have found its way in the bar belonging to them would be released and if Rs. 1,650/- were paid by Messrs. Gokuldas Mohanlal and Co. the smuggled gold which may have found its way in the bar belonging to them would be released. It looks as if the first respondent has traced the smuggled gold in some proportion in the various bars which have been seized. This order is being challenged as being one which is beyond the powers of the first respondent. Under Section 167(8) the power of confiscation exists in respect of smuggled gold. As has been observed by the Supreme Court in its judgment in the case reported in AIR 1958 Supreme Court 845,

> ".....so far as the confiscation of the goods is concerned, it is a proceeding in rem and the penalty is enforced against the goods whether the offender is known or not known; the order of confiscation under Section 182, Sea Customs Act, operates directly upon the status of the property and under Section 184 transfers an absolute title to Government."

19. The right to confiscate smuggled goods under Section 167(8) does not carry with it the right to confiscate unsmuggled goods. The words "such goods" appearing in Section 167(8) cannot be interpreted to mean similar goods. It is not open to the Customs authorities to confiscate similar goods even though they may be of the same quality, bulk and value. The words "such goods" mean the very goods which have been smuggled. If the smuggled goods have been fused with other goods so that the smuggled goods lose their identity, it would not be open to the Customs officers to confiscate any part of those goods. The learned counsel for the respondents has sought to rely on the provisions of Section 168 of the Sea Customs Act, 1878, in support of the order. That section runs as follows :

> "168. The confiscation of any goods under the Act includes any package in which they are found and all the other contents thereof."

It is urged that when smuggled gold is mixed in the crucible with unsmuggled gold and the two

are fused so as to constitute a bar the whole should be treated as a package within the meaning of Section 168 and that as that package contains smuggled gold, that package is liable to be confiscated. The word "package" has been used at several places in the Act. The word "package" finds its place in Section 167(37). The provisions in that connection are as follows :

> "167(37). If it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that
> (a) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them; or x x x
> (c) the contents of such packages have been misstated in regard to sort, quality, quantity or value; or
> (d) goods not stated in the bill of entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the Customs Collector, such packages together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees."

Section 167(68) is another section where reference to package appears. That section is as under :

> "167(68). If, upon examination any package entered in the cargo book required by Section 165, as containing dutiable goods is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book, such package with its contents, shall be liable to confiscation."

Section 194 is another section containing such reference. That section runs as follows :

> "194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs port."

The use of the word "package" as appearing in the various provisions of the Act indicates that the word 'package' in Section 168 refers to the outer cover in which the goods may be wrapped or the container in which the goods may be found.

20. The word "package" has come up for judicial determination. In the case reported in *Studebaker Distributors Ltd. v. Charlton Steam Shipping Co. Ltd*[13]. the Court had to

[13](1938) 1 KB 459

consider the meaning of the word "package" as appearing in a bill of lading. The words therein used were as follows :

> ".... it is agreed and understood that the value of each package shipped hereunder does not

exceed the sum of two hundred and fifty dollars, or its equivalent in the currency of the country where the vessel discharges....."

Goddard, J.

In the course of his judgment observes as follows:

"Apart, however, from the Harter Act, the Plaintiffs say, firstly, that there is a short answer to this clause - namely, that it applies only to a package, and here there was no package. The goods are expressly stated to be unboxed, and the case was argued before me by both parties, who doubtless want a decision on what are known to be the actual facts, on the footing that the cars were put on board without any covering, or to state it in another way, just as they came from the works. I confess I do not see how I can hold that there is any package to which the clause can refer. "Package" must indicate something packed. It is obvious that this clause cannot refer to all cargoes that may be shipped under the bill of lading; for instance, on a shipment of grain it could apply to grain shipped in sacks, but could not, in my opinion, possibly apply to a shipment in bulk, x x x While I hope I am not giving an unduly narrow construction to the clause, I do not feel that I can hold that a motor car put on a ship without a box, crate or any form of covering is a package, without doing violence to the English language."

21. Mr. Justice Dixit and Mr. Justice Shelat of this Court had occasion to consider the meaning of the word "package" in Special Civil Application No. 1304 of 1957, decided on 1st August 1957. In the course of his judgment Mr. Justice Shelat observes as follows :

"The word "package" has not been defined in the Sea Customs Act, and, therefore, it cannot be said that the word "package" has any peculiar or unusual meaning attached by the legislature. We must, therefore, treat the word 'package' in its literal and ordinary meaning. Murray's Dictionary, Vol. VII, page 362 defines a "package" ab a bundle of things packed up and contained in a receptacle. This definition which was indeed pointed out to us by Mr. Mehta would seem to make each of the cloth bags contained in the safe or the box as a separate and distinct package. We do not find any force in the contention of Mr. Mehta that merely because the various articles as also the currency notes of Rs. 42,900/- were kept in the safe or box, all those goods could be said to be in a single "package" as mentioned in Section 168 of the Sea Customs Act." In that case, the article smuggled was found in a steel box which also contained ornaments and currency notes and the ornaments and currency notes were sought to be seized along with the smuggled article. The learned Judges held that the seizure of the ornaments and of the currency notes of Rs. 42,900/- could not be considered as a valid seizure.

22. It is not possible to consider the bars of gold which contain within it grains of smuggled gold along with unsmuggled gold as packges liable to be confiscated under Section 167 read with

Section 168 of the Sea Customs Act. In fact, the first respondent has never claimed to confiscate all the bars. He has only confiscated 103 tolas and 29 vals of gold out of the total quantity of gold seized. In my view, the gold that has been smuggled has got so mixed up with gold that was unsmuggled that it is impossible to separate the smuggled gold from the unsmuggled one and the right to confiscate smuggled gold ceased when the two got inextricably mixed up. In my view, the order passed by the Collector of Customs is not warranted by the provisions of the Sea Customs Act, 1878.

23. While making the order, dated 13th June 1959, the first respondent has in terms stated that he did not rely on the presumption which arises under Section 178-A of the Sea Customs Act for the purpose of the adjudication in question. As the first respondent has not relied upon the provisions contained in Section 178-A, it is not necessary for the purpose of this case to consider the question of the constitutional validity of that section. So far as I am concerned, I am bound by the decision of the Division Bench of this Court reported in 61 Bom LR 1230, where it has been held that the said section is valid in law. I have referred to this fact inasmuch as it has urged by the learned Advocate General that if the respondents were permitted to rely upon the provisions of Section 178-A of the Sea Customs Act, he would rejoin by saying that Section 178-A itself was invalid having regard to the fundamental right guaranteed under Article 19(1)(f) and (g) of the Constitution.

24. In view of what I have stated above, the petitioners are entitled to a writ of certiorari setting aside the order of the first respondent, dated 13-6-1959, and I order accordingly.
25. Mr. Peerbhoy having stated that the gold in question is in the possession of the third respondent, a writ of mandamus will issue against the third respondent for restoring possession of the seized gold weighing 452 tolas and 17-1/2 vals to the petitioners.

26. One month's time is given to the 3rd respondent to restore possession of the gold.

27. So far as the Union of India is concerned, the Petitioners have not pressed their petition against the Union of India. The Petition against the Union of India will stand dismissed.

28. The matter was of considerable importance and has gone on before me for nearly 17 hours and the fair order to make as regards costs is that the respondents Nos. 1 and 3 should pay to the petitioners the taxed costs of the petition and I order accordingly.
Application allowed.