

(2010) 12 GUJ CK 0189

In the Gujarat High Court

Case No : Criminal Revision Application No. 381 of 2005 with Criminal Revisions Application No. 385 of 2005 with Criminal Revision Application No. 386 to 390 of 2005

Amad Noormamad Bakali

APPELLANT

Vs

(The) State of Gujarat and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 108, 161, 164, 200, 313
Customs Act, 1962 — Section 107, 108, 135(1)
Evidence Act, 1872 — Section 10, 11, 24, 30, 34
Penal Code, 1860 (IPC) — Section 120(B)
Sea Customs Act, 1878 — Section 171A

Citation : (2011) 274 ELT 17 : (2011) 2 GLH 31

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : J.B. Pardiwala with Ms. Megha Jani s 1 Criminal Revision application No. 381 of 2005, Mr. H.A. Dave 1, Criminal Revision application No. 385 of 2005 and Mr. B.B. Naik with Mr. D.K. Nakrani 1, Criminal Revision application Nos. 386 to 390 of 2005, for the Appellant; L.R. Poojari APP for Respondent 1, Ms. Amee Yajnik for Respondent 2 and Mr. M. Iqbal A. Shaikh for Respondent 3, Criminal Revision Application No. 381 of 2005, Mr. L.R. Poojari APP for Respondent 1, Ms. Amee Yajnik for Respondent 2, Criminal Revision ApplicationNo. 385 of 2005, Mr. L.R. Poojari APP for Respondent 1 in all matters, Ms. Amee Yajnik for Respondent 2 in all matters, Criminal Revision Application Nos. 386 to 390 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Rajesh H. Shukla, J.—As in all these Criminal Revision Applications, common questions arise for consideration as the aforesaid Revision Applications are also arising from the common judgement and order of the learned Additional Sessions Judge, Kutch at Bhuj, they are being considered simultaneously by the present common order.

2. The present Revision Applications have been filed challenging the impugned judgment and order passed by the learned Additional Sessions Judge, Kutch at Bhuj, in Criminal Appeal No.28/2003 dated 21.5.2005 confirming the judgment and decree passed in Criminal Case No. 566/87 by the learned Chief Judicial Magistrate, Bhuj, dated 26.3.2003 recording conviction of the present applicants, original accused Nos.2, 1, 5, 7, 3, 11 & 6 respectively, on the grounds set out in these applications.

3. In all there were 21 accused persons who were tried for the alleged offences u/s 135(1)(b)(i) of the Customs Act, 1962. Out of this, A-9, A-12, A-13, A-15, A-16, A-17, A-19, A-21 were acquitted. Accused Nos. A-1, A-2, A-3, A-5, A-6, A-7 and A-11 were convicted and held guilty, whereas A-4, A-8, A-18 and A-20 were not available and their trial was separated.

4. The present applicants-original accused have been convicted and sentenced to undergo R.I. for 3 years and fine of Rs. 2,000/-, i/d S.1. for 8 months as stated in the impugned judgment.

5. The Criminal Appeals, as stated above, against the impugned judgment and order of the Chief Judicial Magistrate recording the conviction have been dismissed and therefore the present Revision Applications have been preferred by the applicants, A-2, A-1, A-5, A-7, A-3, A-11 & A-6 respectively, on the grounds stated in detail in these applications.

Criminal Revision Application No. 381 of 2005

6. Learned Counsel Mr.Pardiwala appearing with learned Advocate Ms.Megha Jani for the applicant submitted that the basis of conviction of the present applicant (A-2), is on the basis of the statement of the co-accused u/s 108 of the Customs Act. For that purpose, he referred to the material and evidence including the impugned judgment of the trial Court at page 117 (para 31), page 124 (para 36) and page 164 and submitted that discussion is made with regard to the confessional statement of the present applicant where he has stated that he has admitted that the vessel belong to A-1, who is the brother, and he has a partnership. However, in Para 36 referring to this confessional statement, it has been discussed that both A-1 and" A-2 have made confessional statements. However, this confessional statement is not inculpatory as it has been clearly stated and observed in the judgment and reference is made to the confessional statement of the other co-accused, A-5.

7. Therefore, learned Counsel Mr. Pardiwala submitted that the applicant has been convicted only on the basis of such evidence and these very statements have been referred to and relied upon by the Sessions Court while confirming the judgment of the trial Court. He has submitted that except this confessional statement of the applicant and other co-accused, there is no other evidence and the conviction which is passed and confirmed in the appeal is without any substantive evidence. Learned Counsel Mr. Pardiwala submitted that it is required to be considered whether the conviction can be sustained on such evidence. He

further submitted that no conviction can be based solely on the confessional statement.

8. Further, learned Counsel Mr.Pardiwala submitted that assuming that the statement of the present applicant is inculpatory, can conviction be based solely on such confessional statement? He further submitted that there has to be a corroborative evidence and such confessional statement can be used for corroboration. Learned Counsel Mr.Pardiwala submitted that the statement of the other co-accused recorded u/s 108 of the Customs Act is a weak piece of evidence qua the other accused and cannot be relied upon without any other corroborative material and evidence. He submitted that the statement of the co-accused can be used against other co-accused for a limited purpose as required u/s 30 of the Evidence Act.

9. In support of the submissions, learned Counsel Mr.Pardiwala referred to and relied upon the judgment of the Hon''ble Apex Court in case of Union of India v. Bal Mumund and Ors., reported in AIR 2009 SCW 2604 and submitted that the Hon''ble Apex Court in this judgment has referred to the earlier judgment with regard to the confessional statement u/s 108 of the Customs Act. He emphasised the observations made in Para 21 wherein the earlier judgment has been quoted as under :-

It must be remembered that the statement made before the Customs officials is not a statement recorded u/s 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials u/s 108 of the Customs Act. That material incriminates the petitioner inculcating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculcates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

10. Learned Counsel Mr. Pardiwala has also referred to and relied upon the judgment the Hon''ble Apex Court (Constitution Bench) reported in Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, and referring to the observations made in Head Notes 12 and 16, he has stated that the Hon''ble Apex Court has discussed as to how the probative value of the confessional statement of the co-accused can be considered. It has been observed,

As a result of the provisions contained in S. 30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that

generic sense because of the provisions of S. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

11. He has also referred to the observations made in Para 16 to emphasise that if the other evidence is not satisfactory, the prosecution seeking to rely on the confession of the co-accused has to be considered with presumption of innocence of the accused.

12. Learned Counsel Mr. Pardiwala has also referred to and relied upon the judgment of the Hon''ble Apex Court in the case of Param Hans Yadav and Sadanand Tripathi Vs. State of Bihar and Others, . He has also referred to the judgment of the Hon''ble-Apex Court in the case of Superintendent of Customs Vs. Bhanabhai Khalpabhai Patel and another, , again referring to the confessional statement u/s 108 of the Customs Act and he emphasised the observations made in Para 6 :-

Coming to the statements recorded from A1 and A3 under S. 108 of the Customs Act, the High Court has correctly pointed out that the first Appellate Court was not at all justified in taking those statements of the accused persons as corroborative pieces of evidence to that of witness No. P.W. 7 (who was arrayed initially as accused No. 2 in the complaint). When these, two pieces of evidence, namely, the evidence of P.W. 7 and the statements of A1 and A3 given before the Customs Offices are eschewed from consideration as correctly pointed out by the High Court there is absolutely no evidence worth mentioning to sustain the conviction of the first respondent as recorded by the trial Court and subsequently confirmed by the first Appellate Court. In fact, the High Court has analysed the evidence adduced by the prosecution in the proper perspective and arrived at a correct conclusion that the prosecution has miserably failed to establish the charge against the first respondent. The judgment of the High Court, in our considered opinion, does not suffer either from manifest illegality or irregularity or perversity.

13. Learned Counsel Mr.Pardiwala referred to the judgment of this High Court reported in 2003 (2) GLH 705 in the case of Husen Bhenu Malad and Ors. v. State of Gujarat and Ors. He has also referred to and relied upon the judgment reported in (2006) 13 SCC 210 as well as by this Court reported in 2008 (3) GLH 43.

14. Learned Counsel Mr.Pardiwala therefore strenuously submitted that the conviction of the present applicant, original A-2, is based solely on the statement recorded u/s 108 of the Customs Act. He further submitted that reliance is placed

on the statement of the co-accused recorded u/s 108 of the Customs Act. He also submitted that as laid down by the Hon''ble Apex Court, it has to be ascertained whether such a statement can be said to be voluntary. He further submitted that before it could be considered as admissible in evidence, first it has to be satisfied whether it was voluntarily made and if it has not fulfilled that condition, it cannot be relied upon.

Criminal Revision Application No.385 of 2005

15. Learned Counsel, Mr.Hardik. Dave for the applicant has adopted most of the submissions made by the learned Counsel, Mr.Pardiwala with regard to the basis of the conviction contending that only on the statements of the co-accused recorded u/s 108 of the Customs Act, conviction cannot be based. He has also submitted that there is no corroborative evidence, for which, he has also referred to the details and the statements recorded u/s 108 of the Customs Act. He has also referred to the findings given by the Courts below in support of his submission. He has submitted that the conviction would not be sustainable based only on confessional statements. He has also submitted that even the statements of the co-accused, which may be considered as inculpatory, could not be confined to him and the statements of the co-accused cannot be a basis for conviction without any corroborative evidence. However, he has pointedly referred to Exh.737, which is a statement of the accused No. 1 recorded u/s 108 of the Customs Act and submitted that it is not inculpatory but it is an exculpatory. He submitted that the accused No. 1 is the owner of the vessel and so far as goods are concerned, there is no evidence to connect the accused No. 1 with the alleged offence except the statements of the co-accused. He has also referred to and relied upon the judgments, which have been cited by the learned Counsel, Mr.Pardiwala and, hence, same are not repeated.

Criminal Revision Application Nos.386 to 390 of 2005

16. Learned Sr. Counsel Mr.B.B. Naik appearing with learned Advocate Mr.D.K. Nakrani for the applicants submitted that the allegations against A-3, A-7, and A-11 are that they were involved in sale of the watches. The role attributed to A-5 is that he recovered the consideration and thereby he has abetted or helped in selling the contraband goods (watches).

17. Learned Sr. Counsel Mr.Naik submitted that the statements of the accused persons have been recorded u/s 108 of the Customs Act. However, it is required to be considered what is the inculpatory part in the statement. He further emphasised that the circumstances and the manner in which such statement is recorded is required to be considered. For that purpose, he referred to the evidence and the observations in the impugned judgment. He submitted that the accused were pressurised and their statements have been recorded. In fact, an application was made u/s 200 of Criminal Procedure Code before the Magistrate who made an inquiry.

18. Therefore, learned Sr. Counsel Mr.Naik submitted that such a statement

cannot be said to be voluntary. Learned Sr. Counsel Mr.Naik submitted that the applicants who are the original accused have not to prove their case beyond reasonable doubt and they have to show preponderance of probabilities and once prima facie evidence is shown suggesting that the statements were not voluntarily made, it could not be relied upon. He has referred to the statements of the accused persons recorded u/s 108 of the Customs Act at Exh.732 (A-5), Exh.734 (A-3), Exh.742 (A-7), Exh.804 (A-6) and Exh.807 (A-11). Learned Sr. Counsel Mr.Naik submitted that as can be seen from the evidence and the statement of A-5 at Exh.732, his statement was-recorded while he was in the judicial custody in presence of the Superintendent of Jail. He therefore strenuously submitted that such a statement could not have been recorded after the arrest of the accused in jail and therefore it would not be admissible in evidence.

19. Learned Sr. Counsel Mr.Naik submitted that there has to be an independent evidence before the conviction could be recorded and the conviction cannot be made solely on the confessional statement recorded u/s 108 of the Customs Act as it is a weak piece of evidence. He further emphasised and submitted that in fact the statements of the co-accused have been relied upon which cannot be the basis for conviction.

20. Learned Sr. Counsel Mr.Naik submitted that when the statements of some of the accused are recorded while in the judicial custody it would be in violation of Article 20(3) of the Constitution of India. In support of his submission, he has referred to and relied upon the judgment of the Hon"ble Apex Court in the case of Romesh Chandra Mehta Vs. State of West Bengal, . He emphasised the observations made in Para 26 & 27 and submitted that as observed in this judgment the Customs Officer does not accuse him with the commission of offence and the detention may be only for the purpose of holding effective inquiry under Sections 107 and 108 of the Act and the accusation can be made only after the complaint is lodged. He further emphasised that under Article 20(3) of the Constitution, the right cannot be denied to an accused. He therefore submitted that the impugned judgment and order passed by the trial Court and confirmed by the lower appellate Court deserves to be quashed and set aside and the present application may be allowed.

21. He further submitted that the statement of the person who is not examined as a witness cannot be relied upon. He submitted that the statement of some persons who are neither an accused nor a witness have been relied upon and therefore there is material irregularity for which he referred to Exhs. 760, 762 and 763. Therefore, Learned Sr. Counsel Mr.Naik submitted that the present Revision Applications may be allowed considering even the time gap.

22. Learned Counsel, Ms.Amee Yagnik appearing in all these applications for the respondent has submitted that the scope and ambit of the revisional jurisdiction is very limited and in view of the concurrent findings of two Courts below, the present Revision Applications may not be entertained.

23. In support of this submission, she has referred to and relied upon the judgment reported in Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Suptd. of Customs, Marmgoa, and emphasised that the case before the Apex Court was also regarding the confessional statement u/s 108 of the Custom Act and the re-appreciation of evidence has been considered. She emphasised the observations made as under :-

We hold that a statement recorded by Customs Officers u/s 108 of the Customs Act is admissible in evidence. The Court has to test whether, the inculcating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged u/s 24 of the Evidence Act.

24. Learned Counsel, Ms.Yagnik, therefore, submitted that the Court has to consider whether such a statement is admissible as sought to be canvassed and both the Courts below have not accepted. She further submitted that when the statements made u/s 108 of the Customs Act are admissible, another submissions, which have been made with regard to coercion or threat, are required to be considered. Learned Counsel, Ms.Yagnik submitted that this aspect has also been considered at length by both the Courts below. She pointedly referred to the evidence on record including the statements of the accused persons recorded u/s 108 of the Customs Act at Exhs.733 (A-1), 734 (A-3), 732 (A-5), 804 (A-6), 742 (A-7) & 807 (A-11) and submitted that this very aspect was also considered by the Hon''ble Apex Court in the aforesaid judgment reported in Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Suptd. of Customs, Marmgoa, and submitted that the Hon''ble Apex Court in Para 16 has observed as Under :-

Regarding Section 24 of the Evidence Act the case of the appellant was that since the confessional statement was made under inducement and threat and physical assault which, the High Court on examination, declined to accept on the facts emerging from the evidence in the case, there is no scope for this Court to interfere with the order in that regard in exercise of jurisdiction under article 136 of the Constitution.

25. Learned Counsel, Ms.Yagnik submitted that there was a specific allegation made with regard to ill-treatment and the complaint was also filed but that would not make such statement recorded u/s 108 of the Customs Act inadmissible. She has submitted that though such allegations are made, there is no evidence produced on record, particularly, with regard to the complaint being C.R.No. I-32/1997. Therefore, it was submitted that the presumption cannot be readily made that there was any such duress, threat or compulsion. It was submitted that when there is no such evidence brought on record, such contentions cannot be considered in revision when both the Courts below have examined and it could have been considered on the basis of the material and evidence and as they have failed, such contention, which is raised, is without any basis.

26. She has also referred to the statements as stated above in detail and

submitted that it is a matter of appreciation of evidence whether such statement has been made voluntarily or not. She has pointedly referred to the judgment of the trial Court referring to the point of determination and Point No.3 specifically refers to this aspect as to whether such statement recorded u/s 108 of the Customs Act is admissible or not and whether it can be used or not. While deciding this issue or the point of determination, the discussion has been made with regard to admissibility of such statement made u/s 108 of the Customs Act. Therefore, Ms.Yagnik submitted that the admissibility of this statement recorded u/s 108 of the Customs Act can hardly be now questioned. She further emphasized referring to the evidence and submitted" that Lalji Karshan Kastha, A-15, whose statement recorded u/s 108 of the Customs Act at Exh.253, is not even examined by the A-5, A-7, A-9 and A-13 and there is a suggestion that the statement recorded u/s 108 of the Customs Act was recorded under coercion, duress or threat. She again emphasised referring to the statements of P.W.No.16 viz., Gulamrasul Abdullabhai (Superintendent) Exh.727, P.W.No.18, Sidhirajsinh Gulabsinh Bhati at Exh.795, who has stated that some of the statements were taken down by him as stated in his testimony and P.W.No.19 viz., Satendrajitsing Sorvelsing, Exh.803, who was Customs Officer and submitted that they have fully corroborated about the voluntary nature of the statements having been recorded. Therefore, it has been submitted that it cannot be questioned.

27. Learned Counsel, Ms.Yagnik submitted that even at the time of recording statements u/s 313 of the Criminal Procedure Code, it has not been stated or any evidence is produced. Therefore again, learned Counsel, Ms.Yagnik submitted that while exercising revisional jurisdiction, this Court may not re-appreciate and consider the entire evidence, which has been discussed at length by Courts below. In support of this submission, again she has referred to and relied upon the judgments reported in National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., , and again emphasised that the scope and ambit is very limited. Learned Counsel, Ms.Yagnik submitted that in absence of any miscarriage of justice, exercise of discretion in Revision would not be justified. She again referred to and relied upon the judgment of the Hon"ble Apex Court reported in Amar Chand Agarwalla Vs. Shanti Bose and Another, etc., and emphasised referring to the observation made in Para No.20 of the said judgment that "only in exceptional circumstances, discretion may be exercised".

28. Similarly, she has referred to and relied upon the judgment reported in 1991(3) JT 63 in case of Gagan Bihari Samal and Anr. v. State of Orissa. She referred to and relied upon the judgment reported in Bhana Khalpa Bhai Patel Vs. Assistant Collector of Customs, Bulsar, Gujarat and Another, , more particularly, Para No.73 and submitted that inculpatory and exculpatory admission are required to be considered and this aspect has also been considered in a subsequent judgment reported in State of Maharashtra Vs. Sujay Mangesh Poyarekar, and Ran Singh and Another Vs. State of Haryana and Another, .

29. Learned Counsel, Ms.Yagnik has also submitted that the submissions made

by the learned Counsel with regard to admissibility of the confessional statement and also the admissibility of the statements recorded u/s 108 of the Customs Act qua other co-accused suggesting that if the statement u/s 108 of the Customs Act is made admissible, it would be confining to the accused, who has made such statements, but not in respect of other co-accused, cannot be considered. She has, however, submitted that this aspect is required to be considered in light of the oral Evidence as other statements u/s 108 of the Customs Act of different accused have been recorded independently and based on that, there is further material/recovery of the contrabands articles (watches and money) recovered, for which, panchnama was also made, which is corroborated by the testimony of the Officers of the Customs Department and, therefore, this being relevant aspect or fact, which is established, it cannot be said that the statements recorded u/s 108 of the Customs Act should be read qua the accused, who has made that statements and it would not be considered for other co-accused while deciding the charges, particularly when the charges for the offence u/s 120(B) of the Indian Penal Code is also made.

30. Learned Counsel, Mr.Yagnik, therefore, submitted that unless there is any miscarriage of justice, the findings given by the Court below with discussion of the evidence including the statements recorded u/s 108 of the Customs Act, which is admissible, discretion under the revisional jurisdiction may not be exercised and the Revision Applications may be dismissed.

31. In view of the rival submissions, it is required to be considered whether the present Revision Applications can be entertained or not.

32. The submissions, which have been made by the learned Counsels for the applicants in these group of revisions have mainly emphasised on the aspect of admissibility of the statements recorded u/s 108 of the Customs Act and the probative value thereof. Another limb of the submission is that even if such statement u/s 108 of the Customs Act is made admissible, it would confine to the accused, who has made such statement, but it cannot be considered as any kind of statement or confession or incriminating evidence for the other co-accused, which has been considered by both the Courts below and, therefore, it has been submitted that the present Revision Application requires to be considered as the convictions have been recorded solely on such statements. The submissions, which have been made at length referring to this aspect and also discussion in the judgments given by both the Courts below though sound appealing requires closure scrutiny, it does not seem to be well-founded. The first aspect about the admissibility of the statements recorded u/s 108 of the Customs Act is well settled in light of the judicial pronouncement made by the Apex Court that such statement made before the Officer is admissible in evidence as it cannot be said that the statement before the Police, which is also relied upon time and again that when during the inquiry, such statement is made before the" authorized officer under the statute, such statements would be admissible in evidence and it would not be hit by the provisions of Section 34 or 30 of the Evidence Act.

33. A useful reference can be made to the observations made by the Hon''ble Apex Court in a judgment reported in K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, , Cochin decided by the bench of three Judges on very this point with regard to the statements recorded u/s 108 of the Customs Act. The Hon''ble Apex Court has discussed on this very point and observed that a question considered by three Judges bench in the instant case on a reference from the two Judges bench was whether the confessional statement of the appellant made to Customs Officers u/s 108 of the Customs Act, 1962 though retracted at a later stage, is admissible in evidence and could form basis for conviction and whether retracted confessional statement requires corroboration on material particularly from independent evidence? While considering the object of recording statements u/s 108 of the Customs Act, it has been observed as under :-

the object of the Act empowering Customs Officers to record the evidence u/s 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the- provisions of the Act so as to take proceedings for further action of confiscation of the contraband or imposition of the penalty under the Act etc.

34. It is also required to be mentioned that it has been further observed as under :-

it is not every threat, inducement or promise even emanating from the person in authority that is hit by Section-24 of the Evidence Act. In order to attract the bar, it has to be such an inducement, threat or promise, which should lead the accused to suppose that "by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him.

35. Further, it has also been observed as under :-

The collection of evidence u/s 108 and other relevant provisions relating to search and seizure are only for the purpose of taking further steps for confiscation of contraband and imposition of penalty. The self same evidence is admissible in. evidence on the complaint laid by the Customs Officer for prosecution u/s 135 or other relevant statutes.

36. Therefore, in light of this clear discussion with regard to the admissibility of the statements recorded u/s 108 of the Customs Act and also contention raised with regard to the coercion or threat have also been considered and have not been accepted. It is required to be mentioned as observed that it is the duty of the accused prima-facie to establish by evidence that such statement was recorded under such compulsion or coercion or threat then burden would shift on the prosecution to discharge that it was recorded voluntarily. In the facts of the present case, it could be seen that the accused had moved earlier Criminal Misc. Application Nos.1340, 1347 & 1348 of 1985 and as per the order dated 19.09.1985 passed therein, it has been clearly recorded that the appellant had

undertaken to accept summons u/s 108 of the Customs Act and had agreed to remain present for recording such statement. Therefore, such applications were made u/s 438 of the Criminal Procedure Code, wherein the orders have been passed recording some statements on behalf of the accused and, thereafter, when such statements are recorded, the submission with regard to coercion or threat cannot be readily accepted. Further, as rightly submitted by the learned Counsel, Ms.Yagnik, no evidence has been brought on record on this aspect to primarily establish that it was not made voluntarily. Even the statements u/s 313 of the Criminal Procedure Code does not refer to this aspect, in Which, it was open for the accused persons to say or state before the Court. Therefore, such contention which has been raised at belated stage by way of defence cannot be readily accepted.

37. In the aforesaid judgment of the Hon"ble Apex Court reported in K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, , similar contention raised by the learned Counsel relying upon the judgment of the Apex Court reported in Romesh Chandra Mehta Vs. State of West Bengal, also have been considered. While considering this aspect, it is required to be considered that in a judgment reported in Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Suptd. of Customs, Marmgoa, while considering admissibility of the confessional statement recorded u/s 108 of the Customs Act vis-a-vis other procedure, the Hon"ble Apex Court has quoted earlier judgment of the Apex Court reported in Haroon Haji Abdulla Vs. State of Maharashtra, and made following observations :-

These statements are not confessions recorded by a Magistrate u/s 164 of the Code of Criminal Procedure but are statements made in answer to a notice u/s 171A of the Sea Customs Act. As they are not made subject to the safeguards under which confessions are recorded by Magistrates they must be specially scrutinised to finding out if they were made under threat or promise from someone in authority. If after such scrutiny they are considered to be voluntary, they may be received against the maker and in the same way as confessions are received, also against a co-accused jointly tried with him.

38. It has also been discussed that since such statement given before the Competent Officer under the statute like Customs Act, is not a statement of the accused, a person, who gives such statement, does not give the character of the accused. In a judgment of the Hon"ble Apex Court reported in Romesh Chandra Mehta Vs. State of West Bengal, , this aspect has been considered and same contention has been squarely answered in a judgment of the Hon"ble Apex Court in case of Rajesh Bajaj Vs. State NCT of Delhi and Others, , wherein it has been observed as under:-

We hold that a statement recorded by Customs Officers u/s 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged u/s 24 of the Evidence Act.

39. Therefore, as such statements recorded before the authority under the special statute like Customs Act are not a statements of the accused and, therefore, the submissions made by the learned Counsel that the statements of the co-accused would not be admissible also is misconceived.

40. Further, as discussed hereinabove referring to the judgment of the Hon"ble Apex Court reported in K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, wherein the purpose and object is also reflected and the purpose as indicated is that while making such inquiry for the purpose of collecting evidence and in furtherance thereof when the seizure has been made of the contrabands goods, the entire evidence would be a relevant for considering the guilt of the accused persons. Therefore in the facts of the case, on the basis of such statements of the accused recorded revealing the details with regard to the transaction which have taken place leading to further recovery of the contraband articles and or money, for which, panchnamas are made. Therefore, observations have been made by the Apex Court in a judgment reported in K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, that such statements will lead to further evidence is required to be considered if on the basis of such revelation made in the statements leading to further evidence like recovery or discovery of the contraband articles, for which, panchnama have made would also be a relevant evidence. Again it is corroborated by the testimony of the Customs Officers as stated hereinabove. This aspect has to be considered in light of the provisions of Section 6 of the Evidence Act read with Section 10 and 11 of the Evidence Act.

41. Provisions of Section 6 of the Evidence Act refers to the relevancy of the facts forming part of some transaction, which reads as under :-

6. Relevancy of facts forming part of same transaction.-Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

42. This aspect has to be considered in light of the evidence regarding the recovery of the contraband articles and the money from the co-accused on the basis of the revelation made in the statements recorded u/s 108 of the Criminal Procedure Code of the Customs Act by other co-accused.

43. Further Section 10 of the Evidence Act clearly suggests that it is not merely a statement made by one co-accused, which would have bearing but if on the basis of such statements, further evidence is collected suggesting the involvement in the offence, it will have to be considered.

44. Therefore, the submissions made by the learned Counsel with regard to the conviction having based Only on the confessional statements u/s 108 of the Customs Act only and that there is no corroborative evidence and the fact that such statements could be only corroborative piece of evidence are misconceived.

45. Another facet of arguments that the statements made by the co-accused cannot be made admissible in evidence to establish the guilt of other co-accused even though the statement u/s 108 of the Customs Act is made admissible is also misconceived. As discussed above, the statement recorded u/s 108 of the Customs Act is not a statement u/s 164 of the Criminal Procedure Code as it is not a statement of the accused and still on the basis of such statement or admission made, further evidence is collected, which would be evidence for all the accused and if such independent evidence is there, it cannot be said that other co-accused are implicated merely on the basis of the statements of other co-accused recorded u/s 108 of the Customs Act. In fact, it is on the basis of such revelation, further evidence has been collected like in the present case on the basis of the statement of the co-accused when search has been made and the contraband articles (watches and money) have been recovered from the other co-accused would in fact be a evidence against them. Further, there is no explanation with regard to this aspect in further statements u/s 313 of the Criminal Procedure Code. Therefore, cumulative effect of the entire evidence has to be considered and particularly when there is no explanation coming forth from the accused or the concerned accused with regard to the incriminating evidence against him. Therefore, it cannot be said that the impugned judgment and order recording conviction, which has been confirmed, is perverse or resulted into miscarriage of justice. It is also well settled that the provisions of Section 313 of the Criminal Procedure Code is specific for the purpose of pointing out circumstances with regard to the relevant evidence or incriminating evidence against him, which can be considered and opportunity is offered to give explanation or rebuttal even by preponderance of the probability.

46. Therefore, having regard to the aforesaid discussions, it cannot be said that the impugned judgment and order recording conviction, which has been confirmed by the lower Appellate Court is perverse or it is based only on the statements recorded u/s 108 of the Customs Act or even it is based on the statements of the co-accused recorded u/s 108 of the Customs Act as sought to be canvassed. Moreover, it is well settled that the scope of exercise of discretion is very limited as observed in a catena of judicial pronouncement including that judgment of the hon''ble Apex Court reported in Raj Kumar Vs. State of H.P., , wherein referring to earlier judgment reported in State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri, it has been observed as under :--

the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

47. A useful reference can be made to the judgment reported in Johar and

Others Vs. Mangal Prasad and Another, , wherein it has been observed referring to the scope of exercise of revisional jurisdiction under Sections 397 read with Section 401 of the Criminal Procedure Code and observed that "the revisional jurisdiction of the High Court in terms of Section 397 read with Section 401 of the Criminal Procedure Code is limited.

48. Further, it has also been observed referring to the earlier judgment that "It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice."

49. It is also well settled that if one possible view has taken, it cannot be even substituted even if other view is possible.

50. Therefore, having considered the aforesaid guidelines with regard to limited scope, there is no reason to interfere with the concurrent findings arrived at by both the Courts below and the present Revision Applications deserve to be dismissed.

51. Accordingly, the present Revision Applications stand dismissed. The applicants are on bail and, hence, their bail bonds stand cancelled. Rule is discharged.

52. Office shall keep copy of the order in each matter.

FURTHER ORDER

After the order was pronounced, the learned Counsel Mr. J. B. Pardiwala with Ms.Megha Jani appearing in Criminal Revision Application No. 381 of 2005, learned Counsel Mr.H.A. Dave appearing in Criminal Revision Application No.385 of 2005 and learned senior Counsel Mr.B.B. Naik with Mr.D.K. Nakrani appearing in Criminal Revision Application Nos. 386 of 2005 to 390 of 2005 have requested for grant of ten weeks time to surrender and to enable them to approach the higher forum. In the facts and circumstances, the request is granted. Time to surrender is, therefore, granted of eight weeks.