

(1980) 02 DEL CK 0011

In the Delhi High Court

Case No : Criminal A. No. 104 of 1975

Assistant Collector of Customs

APPELLANT

Vs

Harbans Lal Sharaf Alias Punjabi Seth

RESPONDENT

Date of Decision : 08-02-1980

Acts Referred:

Citation : (1985) 5 ECC 82

Hon'ble Judges : Prithvi Raj, J;O.N. Vohra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Harbans Lal Sharaf alias Punjabi Seth of M/s. Harbans Lal Bansi Dhar, F-73, Moti Bazar, Chandni Chowk, Delhi, was tried (sic) into India and smuggle Indian currency and foreign exchange out of India in contravention of the restrictions imposed u/s 8 of the Foreign Exchange Regulation Act, 1947 and Section 19 of the Sea Customs Act, 1878 punishable u/s 120B of the Indian Penal Code and for the substantive offence u/s 167(81) of the Sea Customs Act, 1878. Shri S.C. Jain, Additional Chief Metropolitan Magistrate, New Delhi vide his judgment dated January 21, 1975 acquitted Harbans Lal Sharaf alias Punjabi Seth (hereinafter referred to as the respondent) of the offence punishable u/s 120B of the Indian Penal Code but convicted him u/s 167(81) of the Sea Customs Act, 1878 and sentenced him to a fine of Rs. 3,000 with the direction to undergo rigorous imprisonment for six months in default of payment of fine. Feeling aggrieved by the acquittal and the sentence, Assistant Collector of Customs, New Delhi preferred Criminal Appeal No. 104 of 1975 and Criminal Revision No. 73 of 1975, Inasmuch as both these matters arise out of the same judgment, it would be expedient to dispose them of by a single judgment.

2. Brief facts of the prosecution case are that in consequence of information received by the Customs authorities at Delhi, look out was kept by Y.R. Sachdev (PW-5), Preventive Superintendent, Customs and party for B.O.A.C. Flight No. 936 scheduled to arrive from London via Zurich-Cairo-Tehran at 5.25 A.M. on

June 27, 1962 at Palam Airport, New Delhi. Members of the crew were subjected to interrogation after obtaining the usual declaration in the Crew Baggage Declaration Form. Charles Maloney (PW31), Flight Engineer of the aircraft made a declaration, copy whereof is Ex. PW3/A. Thereafter, he was subjected to a search by Narsingh Dass (PW19), Deputy Superintendent, Customs, in the presence of public witnesses, K.L. Sikka (PW4) and G.N. Mehra (PW 8), and others. He was found to carry 15 bars of gold bullion weighing 15 kilograms valued at about Rs. 1,80,000 concealed in a specially prepared jacket which he was wearing. Each bar was wrapped with a paper slip bearing the name "Noora". On being questioned if he had obtained the requisite permission of the Reserve Bank of India to import gold into India, Charles Maloney answered in the negative. The search of the brief case of Charles Maloney yielded incriminating documents, inter alia, a slip, copy whereof is Ex. PW 3/H, bearing names, Latif Hoory, Rasik Lal Shah and Harbans Lal Bansi Dhar Sharaf and particulars including telephone numbers. The gold and the documents were seized and a memo, copy whereof is Ex. PW3/B, was prepared by R.N. Chopra (PW12), Inspector, Preventive Customs, and attested by witnesses. Charles Maloney, on being questioned in regard to these writings, stated that he had been given the bars of gold at Rome by Latif Hoory, a resident of Beirut, for being delivered to Rasik Lal G. Shah or Harbans Lal Sharaf at Delhi. He also disclosed that Rasik Lal G. Shah was the clerk of Shanti Lal Laxmichand Modi (shortly S.L. Modi) of Bombay and he had carried gold on earlier occasions for S.L. Modi from Latif Hoory. He further disclosed that Rasik Lal G. Shah would be found in Hotel Airlines and he was to meet him (Charles Maloney) in Ashoka Hotel, New Delhi.

3. In the course of further enquiries room No. 115 occupied by Rasik Lal G. Shah was searched by A.K. Malhotra (PW14), Inspector Preventive, and Intelligence, in the presence of Pahalaj Rai N. Hupani (PW27), Assistant Manager, Hotel Airlines and Panna Lal (PW15). The person of Rasik Lal G. Shah was searched and documents, copies whereof are Ex. PW13/B to Ex. PW 13/G and Ex. PW13/G-1, were seized vide memo dated June 27, 1962 Ex. PW13/A. A.K. Malhotra recorded a statement, copy whereof is Ex. PW14/B, on that day. On the following day, he recorded a further statement, copy whereof is Ex. PW14/C.

4. B.D. Nayyar (PW12), Inspector, Customs, conducted search of the premises F-73, Moti Bazar, Chandni Chowk, Delhi and took into possession a number of documents vide memo dated June 27, 1962, copy whereof is Ex. PW11/A, in the presence of Krishan Lal Chadha (PW11) and Dev Raj Vij (PW16). On the following day, statement of the respondent was recorded by B.K. Kalia (PW9), Deputy Superintendent, Customs in the presence of Y.R. Sachdev and public witnesses, Piare Lal (PW6) and A.S. Sawhney (PW 10).

5. Simultaneously, the residential premises of S.L. Modi and J.L. Modi at Bombay were searched and documents were seized. Their statements were also recorded. Ultimately, a complaint in respect of offences u/s 120B of the Indian Penal Code read with Section 167(81) of the Sea Customs Act, 1878, hereinafter referred to

as "the Act" as also for the substantive offence u/s 167(81) of the Act was filed before the Sub-Divisional Magistrate, New Delhi, by Shri K. Saravanai (PW2)," Assistant Collector of Customs, New Delhi, against Mitri Kassab, Lebanese national, resident of Beirut; Latif Hoory alias Noora, Iranian national, resident of Beirut, S.L. Modi, J.L. Modi, Nalin Kumar Dass, Rasik Lal G. Shah and the respondent. Before doing so, Shri K. Saravanai procured authorisation u/s 187A of the Act from Shri K. Narasimhan, Chief Customs Officer, Customs Aerodrome, Delhi (Palam) and sanction of the Chief Commissioner of Delhi u/s 196 of the Criminal Procedure Code in regard to the offence u/s 120B of the Indian Penal Code read with Section 167(81) of the Sea Customs Act. It may bear mention here that prior to the filing of this complaint, separate proceedings were taken against Charles Maloney who pleaded guilty to the charge under Foreign Exchange Regulation Act, 1947 and Section 167(81) of the Act and was convicted and sentenced to rigorous imprisonment for six months.

6. On the basis of the material that was collected in the course of the enquiry which preceded the filing of the complaint, it was alleged that there was a continuing conspiracy to smuggle large quantities of gold into India during the period from August, 1961 to June, 1962, to dispose of gold in India and to smuggle out of India rupee currency notes and foreign exchange in sterling and U.S. dollars. It was also alleged, inter alia, that on May 29, 1962, 14 kilograms of contraband gold valued at Rs. 1,68,000 was carried by Charles Maloney from Beirut to Delhi and kept or concealed or otherwise dealt with at Delhi and foreign exchange comprising of ? 2999 and US \$ 9177 was sent from Delhi to Beirut through Charles Maloney towards sale proceeds of the gold and that on June 27, 1962, 15 kilograms of contraband gold valued at Rs. 1,80,000 was carried from Rome to Delhi and kept concealed or otherwise dealt with, etc. It was also alleged that these activities were undertaken knowingly and with intent to defraud the Government of duty payable thereon and to evade the prohibition and restrictions for the time being in force issued u/s 8(1) of the Foreign Exchange Regulation Act, 1947 and deemed to have been issued u/s 19 of the Act by virtue of Section 23A of the Foreign Exchange Regulation Act, 1947 in relation to gold and that the accused persons acquired possession of the said gold and were concerned in concealing, carrying, removing or dealing with the said gold chargeable to duty which had not been paid and with respect to the importation of which there was a prohibition and restriction, namely, Notification No. 12(11) F. 1/48 dated August 25, 1948, as amended.

7. Hardly two witnesses for the prosecution were examined when the respondent absconded and could not be found for a period of three years. Accordingly, the trial Magistrate separated the case of the respondent vide his order dated April 11, 1967 and proceeded against the other accused persons. Vide his judgment dated June 26, 1968, S.L. Modi and Rasik Lal G. Shah were convicted u/s 120B of the Indian Penal Code read with Section 167(81) of the Act and sentenced to undergo rigorous imprisonment for two years. They were also convicted for the substantive offence and sentenced to rigorous imprisonment for two years and to

a fine of Rs. 2,000. S.L. Modi and Rasik Lal G. Shah went up in appeal which came up for hearing before an Additional Sessions Judge who accepted the same and acquitted them of the charges. The Assistant Collector of Customs preferred an appeal before this Court. Hardayal Hardy and M.R.A. Ansari, JJ., accepted the appeal vide their judgment dated May 28, 1971 (now reported as 1971 2 Del 584 holding that the first appellate Court was wrong in rejecting the evidence of Charles Maloney as not being worthy of credence and in holding that circumstantial evidence produced to corroborate the evidence of the accomplice was capable of being construed both in favor of as well as against the accused persons. As a result, S.L. Modi was sentenced to rigorous imprisonment for two years u/s 120B of the Indian Penal Code and to rigorous imprisonment for two years and a fine of Rs. 2,000 u/s 167(81) of the Act and Rasik Lal G. Shah was sentenced to rigorous imprisonment for one year u/s 120B of the Indian Penal Code and to rigorous imprisonment for one year and a fine of Rs. 1,000 u/s 167(81) of the Act.

8. As the respondent became available, Shri. K.P. Hati, who had succeeded Shri. K. Saravanai on his retirement, moved an application for resumption of proceedings. The request being allowed, the trial proceeded.

9. The version of the respondent during the trial was one of total denial. He even denied having any concern with the premises from where incriminating documents were stated to have been recovered. He also denied having any association with Charles Maloney, S.L. Modi or Rasik Lal G. Shah. According to him he had filed a complaint against B.K. Kalia in the year 1958 and on that account he had been falsely implicated.

10. Shri S.C. Jain, Additional Chief Metropolitan Magistrate, New Delhi, took the view that there was nothing in the statement of Charles Maloney to indicate that the respondent had any dealings with him in the matter of smuggling gold into India. He also took the view that the slip, copy Ex. PW3/H, which bore the names, addresses and telephone numbers of the respondent and others did not appear to be a genuine document. He also took the view that the identification of the respondent by Charles Maloney after more than 10 years in the absence of a prior test identification parade did not inspire confidence. He also took the view that letters in Gujarati Ex. PW 13/B and Ex. PW 13/C make mention of one Punjabi Seth who was stated to be an alias of the respondent but the wedding card Ex. PW 13/G-1 which was seized during the personal search of Rasik Lal G. Shah did not serve as a convincing link to establish the identity. He also took the view that there was nothing in the statement of the respondent before the Superintendent of Customs that he was a member of the criminal conspiracy for which he had been charged. As a result, the respondent was acquitted of the charge u/s 120B of the Indian Penal Code. However, the Additional Chief Metropolitan Magistrate held that it looked highly probable that the respondent had some contacts with those who dealt with smuggled goods and it stood admitted in the statement, copy Ex. PW 5/A, that he knew Rasik Lal G. Shah and

S.L. Modi and that he had been called to Hotel Airlines by Rasik Lal G. Shah and offered 14 kilograms of smuggled gold, and Therefore, his denial in regard to dealing in smuggled gold was not acceptable, particularly when he was a sharaf by calling. It was in this way that conviction u/s 167(81) of the Act was recorded and a fine of Rs. 3,000 was imposed with the observation that it is only in the event of the culprit not feeling the shame which comes in the wake of punishment that he should be inflicted the pain of undergoing a jail sentence.

11. Shri Harjinder Singh, learned Counsel appearing for the respondent has raised preliminary objections in regard to the maintainability of the appeal and the revision petition. His contention is that the original complaint dated January 19, 1963 was made by Shri K. Saravanai, Assistant Collector of Customs who had been duly authorised by the Chief Customs Officer but that was not the complaint in which the acquittal and conviction was recorded. It is stated that Shri Hati, Assistant Collector of Customs, filed a fresh complaint and executed a vakalatnama in favor of a new counsel, namely, Dr. V.D. Mahajan, Advocate, on May 8, 1967, and Therefore, the instant appeal presented by Dr. V.D. Mahajan is not maintainable as there was no such authorisation by the Chief Customs Officer in favor of Shri Hati, as it was in favor of his predecessor. Another ground that has been pressed is that it was only the Public Prosecutor who was competent to file the appeal inasmuch as the complaint was filed pursuant to investigation by the customs authorities under the Act and, Therefore, the provision that was relevant was Section 378(2) and not Section 378(4) of the Criminal Procedure Code, 1973. As regards the revision petition, the objection is that the appeal lay against the judgment and, Therefore, the revision is not maintainable.

12. We find no substance at all in these objections as we would presently show. Section 187A of the Act says that no Court shall take cognizance of any offence relating to smuggling of goods punishable under Item 81 of the Schedule to Section 167, except upon complaint in writing, made by the Chief Customs-Officer or any other officer of customs not lower in rank than an Assistant Collector of Customs authorised in this behalf by the Chief Customs-officer. It is not in dispute that Shri K. Saravanai was a duly authorised officer at the time cognizance was taken by the Magistrate. What happened thereafter was that the respondent absconded and this led to the separation of his case. It is significant to note here that in his order dated April 11, 1967, the Sub-Divisional Magistrate specifically recorded that the respondent would be tried from the stage at which he had absconded. Two witnesses for the prosecution had been examined by that time. Accordingly, on the respondent becoming available and the Sub-Divisional Magistrate being apprised of the development by Shri Hati, the proceedings were revived. Shri Hati had described himself in his application as successor-in-office to Shri K. Saravanai. It is true that along with the application, Shri Hati filed a copy of the original complaint dated January 19, 1963. This act cannot, however, by any stretch of reasoning, be construed as amounting to the filing of a fresh complaint by a person not duly authorised in that behalf. It was a simple request to the Magistrate for revival of the proceedings so that the proceedings may

reach the logical end. The complaint against the respondent in the circumstances, was the complaint dated January 19, 1963 which had been filed by Shri K. Saravanai and no question of taking fresh cognizance against the respondent on his becoming available arose. No exception could Therefore, be taken to Shri Hati's continuing with the complaint by offering such assistance as was called for by appointing a new counsel, and in fact, no objection to the continuance of the proceedings was taken on behalf of the respondent and no objection to the appointment of Dr. V.D. Mahajan as Advocate of the complainant was even raised. It is, Therefore, futile at this stage to urge that on the retirement of Shri K. Saravanai, his successor-in-office could not continue the proceedings or could not appoint a new counsel or that the counsel could not file the instant appeal. It has to be borne in mind that the complaint filed by Shri K. Saravanai was not one filed in his personal capacity. Section 187A of the Act is categorical when it says that cognizance for the offence u/s 167(81) of the Act cannot be taken except upon complaint made by the Chief Customs-officer or such officer as has been authorised by him but not an officer lower in rank than an Assistant Collector of Customs. The complaint was, Therefore, a complaint which was filed by Shri K. Saravanai in his official capacity. This being the case no exception can be taken to the continuance of proceedings by the successor-in-office. It would be absurd to imagine in the context that on the death, retirement or transfer of such a complainant, the complaint would come to an end or that the successor would not be entitled to file the appeal. Such an interpretation would go contrary to the well settled and salutary rule of interpretation of statutes: that the provisions of law should be so construed as to serve the ends of justice and not to defeat them. We see no merit in the argument of Shri Harjinder Singh that Shri Hati should also have been an officer specifically authorised u/s 187A of the Act. In our view, he was otherwise the authorised officer for the purposes of this complaint being the successor of Shri K. Saravanai. The authorisation u/s 187A that is called for was for the purpose that the Magistrate should take cognizance on the complaint. Once that was taken, no question of further authorisation for continuance of the complaint arose and no fresh authorisation for the filing of the appeal was called for. The learned Counsel has not been able to point out any provision under the Act or the Criminal Procedure Code or the High Court Rules and Orders as may give support to his contention.

13. A similar question arose in *Sachidananda Banerji v. Motichand Verma* AIR 1970 SC 428, and was repelled with the following observations:

We are also of the view that the word "complainant" in Section 417, Criminal P.C. is not used in any restrictive sense and that where the statute provides for complaint by a public servant with the sanction of his superior officer, as a condition precedent to cognisance by a Magistrate, it is the public office that counts and the successor-in-office of that officer is also the complainant within the meaning of Section 417, Sub-section (3), Criminal P.C. and is equally competent to file the appeal. There is good deal of difference between a private

complaint and complaint by a public servant under the provisions of a statute. The complainant in the latter case is really the office and not the individual and the individual comes into the picture only because the office speaks through the individual.

14. Coming to the second contention, Section 378, in so far as it is relevant, provides:

(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of Sub-Section (3), to the High Court from the order of acquittal.

....

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

....

(6) If in any case, the application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-Section (1) or under Sub-Section (2).

15. The use of the words "save as otherwise provided in Sub-Section (2)" in Sub-Section (1) clearly postulates that if an order of acquittal is passed in any case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than the Code of Criminal Procedure, 1973, the Central Government may direct the Public Prosecutor to present the appeal. In other cases, the State Government may direct the Public Prosecutor to present the appeal. These general provisions are followed by the special provision contained in Sub-Section (4) which deals with appeal against order of acquittal passed in any case instituted upon complaint. This being so, the appeal in the instant case could validly be filed by the complainant. The complainant was the Assistant Collector of Customs who had been duly authorised in that behalf. Shri K. Saravanai retired during the pendency of the complaint. Accordingly, it was prosecuted by his successor-in-office. In the circumstances, the Assistant Collector of Customs who was the complainant could file the appeal against the order of acquittal and this is what

exactly happened.

16. According to Shri Harjinder Singh, the Act has provided an agency empowered to make investigation into the offence for which the respondent was charged, and Therefore, the appeal against the acquittal could be filed by the Public Prosecutor at the behest of the Central Government and in no other way. We have already said above that the provision contained in Sub-Section (4) is a special provision dealing with an order of acquittal passed in a case instituted upon complaint, and Therefore, has overriding effect. However, in all fairness to Shri S.L. Watel, learned Counsel appearing for the appellant, we may mention that according to him the officers appointed under the Act cannot be said to be officers empowered to make investigation into the offence u/s 167(81) of the Act. His reliance is on the definition of the term "investigation" contained in Clause (h) of Section 2 of the Criminal Procedure Code, 1973 which says that it "includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf." An officer appointed under the Act, it is submitted, is neither a police officer nor a person authorised by a Magistrate to collect evidence, and Therefore, an enquiry made under the Act cannot be said to be an investigation within the meaning of the term under the Criminal Procedure Code. Reliance has been placed on Romesh Chandra Mehta Vs. State of West Bengal, , wherein J.C. Shah J., who spoke for the Court, observed:

Section 25 of the Indian Evidence Act, 1872, enacts that "No confession made to a police officer shall be proved as against a person accused of any offence...." But a Customs Officer is not a member of the police force. He is not entrusted with the duty to maintain law and order. He is entrusted with power which specifically relates to the collection of customs duties and prevention of smuggling. There is no warrant for the contention raised by counsel for Mehta that a Customs Officer is invested in the enquiry under the Sea Customs Act with all the powers which a police officer in-charge of a police station has under the Code of Criminal Procedure.... He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report u/s 173 of the Code of Criminal Procedure. He can only make a complaint in writing before a competent Magistrate.

17. Reliance has also been placed on Illias Vs. Collector of Customs, Madras, , wherein Grover, J., who spoke for the Court observed in a case arising under the Customs Act, 1962:

Even though under the new Customs Act of 1962 a Customs Officer has been invested with many powers which were not to be found in the provisions of the old Sea Customs Act of 1878, he cannot be regarded as a "police officer" within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Evidence Act.

18. In the view which we have taken in regard to Sub-section (4) we feel that it is wholly unnecessary to go into the question whether the appeal against the order of acquittal can be filed by the Public Prosecutor under instructions of the State Government or could also be filed by the Public Prosecutor under instructions of the Central Government. The fact remains that the complainant had a right to file the appeal and that power was co-ordinate with the power of the State Government or the Central Government, as the case may be, to file appeal through the Public Prosecutor and in this case the appeal was filed only by the complainant and no conflict of the type envisaged under Sub-section (6) above arises in this case.

18A. As regards the objection against maintainability of the revision there is not much of substance as in view of the provision contained in Section 401 of the Criminal Procedure Code the power to enhance the sentence u/s 386 of the Criminal Procedure Code can be exercised in a revision.

19. Coming to the merits of the case, the most important witness is Charles Maloney (PW31). Being an accomplice, he is to fulfill the double-test requirement recognised by the Supreme Court in Sarwan Singh Vs. The State of Punjab, before conviction can be founded on his testimony. However, before dilating on this aspect, it would be expedient to recapitulate what Charles Maloney has to say. Shorn of details, Charles Maloney has told how he was gradually lured into smuggling of gold by Hoory, Balladi and Kassab and was made to believe by S.L. Modi that it was safe to smuggle gold and he successfully smuggled gold once in January or February, 1962 and again in early May, 1962. He goes on to tell that on the second occasion S.L. Modi asked him to tell Hoory to purchase a gold watch and he mentioned the particulars in his diary, copy whereof is Ex. PW3/E3 in his hand. Thereafter, in late May, 1962, Hoory gave him 14 kilograms of gold and the gold watch for being smuggled into India. On arrival at Delhi, he went to Ashoka Hotel and met Rasik Lal G. Shah. From there they proceeded to Hotel Airlines in separate taxis. Rasik Lal G. Shah went in first. He came out after some time along with the respondent. While in the Hotel, Charles Maloney made over the gold watch and the gold to Rasik Lal G. Shah who in turn handed over the same to the respondent. The respondent gave a bundle of currency notes and traveller's cheques to Rasik Lal G. Shah who made over the same to Charles Maloney. After making some calculations, Rasik Lal G. Shah told him that a balance of Rs. 25,000 remained payable. He left the Hotel and, on return to Beirut, made over the currency notes to Hoory. In June, 1962 Hoory gave him 15 kilograms of gold for being smuggled into India and a jacket. He also gave him two names and telephone numbers and instructed him that in the event of Rasik Lal G. Shah not turning up, he should ring up the respondent and deliver the gold to him. He noted down the names and telephone numbers in a slip, photo stat copy whereof is Ex. PW3/H. On reaching Delhi, he was apprehended by the customs authorities and during the course of his personal search the gold he was carrying and the original slip were seized besides a number of other documents, photostat copies whereof are Ex. PW3/G, Ex. PW3/F1, Ex. PW3/F-2, Ex. PW3/E-1

and Ex. PW3/D-1 to Ex. PW3/D-3 and Ex. PW3/D6 to Ex. PW3/D-9. He made two statements, one on June 27 and the other on June 30, 1962 and gave Explanation Ex. PW7/1 in regard to entries in the diary. He has sworn that his code name was "Andre" and that of Hoory was "Noora".

20. This statement of Charles Maloney is inculpatory and the first point for consideration is as to whether as a witness Charles Maloney is reliable. Shri Harjinder Singh has fairly and frankly conceded that in view of the finding of this Court in the aforesaid appeal filed by the Assistant Collector of Customs against S.L. Modi and others he would not contend that Charles Maloney is an unreliable witness. He has, however, maintained that no conviction can be based on his evidence in the absence of corroboration in material particulars and that so far as the respondent is concerned, there is not a shred of such corroboration. We thus stand relieved of the responsibility of examining the evidence of Charles Maloney for determining if as a witness he is worthy of reliance and would rest content with the observation that the account given by Charles Maloney is a forthright one and there is no reason to disbelieve it, and furthermore, there is no discernible reason why he should falsely implicate the respondent.

21. What remains to be seen is whether the statement of Charles Maloney receives corroboration in material particulars for being acted upon. In our view, there is such corroboration and in ample measures as we would presently show by dealing with the major items of evidence under distinct heads:

I. Recovery of slip, photostat copy whereof is Ex. PW3JH, at Palam Airport and the material contained therein.

22. The slip bears the name "Hoory c/o. MIRELIS GENEVA" at the top and the name "Rasik Lal Shah" with the address "Hotel Airlines and numbers 45861 and 46862" and the name "Harbans Lal" with the address "73-F, Moti Bazar, Chandni Chowk", and No. "220394". The recovery was effected vide memo copy Ex. PW3/B, which has been duly proved by K.L. Sikka (PW4), G.N. Mehra (PW8) and R. N. Chopra (PW12). The learned Additional Chief Metropolitan Magistrate observed that there was no mention of the name of the respondent in the diary which too was recovered. He also observed that it was a matter of common knowledge that those who indulge in acts of smuggling do so secretly. Accordingly, he took the view that the slip which mentioned the names and telephone Nos. of the respondent and Rasik Lal G. Shah as well as the name and particulars of Hoory appeared to be a made-up document. To say the least, this approach is erroneous. The learned Additional Chief Metropolitan Magistrate ought to have analysed this piece of evidence on its own without having allowed his mind to be swayed by considerations which are altogether conjectural. The search was effected by a team of officers who had joined two public witnesses. K.K. Chopra (PW3) was Superintendent, Customs and Nar Singh Das (PW19) was Deputy Superintendent, Customs. Inspector R.N. Chopra conducted the search in their presence. None of the witnesses could be falsified in cross-examination. Accordingly, there was no reason at all to hold that the slip was a made-up

document.

23. Shri Harjinder Singh has endeavored to support the conclusion by pointing out that the particulars of the slip are not mentioned in the seizure memo, that it was not sealed at the spot, that it was not put to the respondent at the earliest occasion and that there is no evidence on the record to show that what purports to be the telephone No. of the respondent was in fact his telephone No. as no one was summoned from the telephone department to vouchsafe that fact. We see no substance in these submissions. The description of the various documents given in the seizure memo is adequate. There was no necessity of putting the slip in a sealed cover. Inasmuch as it contained entries in the hand of Charles Maloney, it was required to be put to Charles Maloney and it was so done. It would be seen that the respondent himself stated in his statement dated June 28, 1962 copy Ex. PW6/A that he was doing business under the name and style "Harbans Lal Banshi Dhar" at F-73, Chandni Chowk, Delhi, and that telephone No. 220393 was installed at that premises. In view of this admission as well as the fact that nothing was brought on the record on behalf of the respondent that the admissions regarding the telephone No. and his connection with M/s. Harbans Lal Banshi Dhar were erroneous, there is no reason, at all, for looking at the slip with suspicion. It is also pointed out that Charles Maloney saw the respondent once and no test identification parade for getting the respondent identified by Charles Maloney was arranged and the request made during the trial for arranging such a parade was turned down by Shri K.B. Andley, Additional Chief Judicial Magistrate, vide order dated February 15, 1973. It is urged that identity of the respondent to be the person mentioned in the slip has not been properly established. In our opinion the mention of the telephone No. along with name and particulars of Harbans Lal leaves no scope for doubt in the mind in regard to the identity of the respondent. Charles Maloney had identified the respondent in Court. This evidence of identification is the substantive evidence and it is amply corroborated by the entries in the slip. As regards the turning down of the request for the holding of the test identification it would suffice to mention that holding of test identification parades falls within the domain of investigation. One of the important purposes for holding such a parade in the case of an accused person who was not previously known to eye witnesses is to have the satisfaction that investigation was proceeding in the right direction. In the instant case, Harbans Lal was very well known to Rasik Lal G. Shah and it was a case of criminal conspiracy in which Charles Maloney, Rasik Lal G. Shah and Harbans Lal besides others were coconspirators. There was, Therefore, no question of the holding of the test identification parade at any stage.

24. The slip which bears entries in the hand of Charles Maloney is a material of unique value, inasmuch as it connects Hoory, the person who was providing gold at one end with Charles Maloney, the carrier and Rasik Lal G. Shah and the respondent the recipient, at the other end.

II. Statement of Harbans Lal recorded on June 28, 1962, EX. PW5/A.

25. In his statement recorded by B.K. Kalia (PW9), Deputy Superintendent, Customs, the respondent stated that during his visit to Bombay he met S.L. Modi casually in the mandir above the shop of S.L. Modi and he introduced himself as a "businessman" of Delhi. He also stated that, thereafter, he met S.L. Modi on a number of occasions and in one of the meetings he was enquired by S.L. Modi if he would deal in smuggled gold but he turned down the offer on being told that the gold would be 50 or 60 kilograms as he was not capable of arranging so much money. He further stated that he did not yield to the persuasion of Modi despite the call on May 29, 1962. He further stated that he knew one Shah, employee of Modi, who called him. to Hotel Airlines and he went there and found a foreigner sitting. He also stated that smuggled gold weighing 14 kilograms was offered to him. He also stated that Shah gave a bundle of foreign currency notes in sterling and dollars in his presence and after the foreigner had left, he came back with Shah who had a thela in his hand and left him in Chandni Chowk, Delhi. He also stated that after some time Shah came to his shop with a huge amount of currency notes and he inferred that Shah had disposed of the gold. He also stated that on June 26, 1962 he got a ring from Shah who enquired if he would dispose of the gold but he told him that he had not so much money.

26. This statement of Harbans Lal recorded u/s 171A of the Act is admissible in evidence, regardless of the consideration that it is wholly exculpatory or not. In *Veera Ibrahim Vs. The State of Maharashtra*, , it was observed that in order to claim the benefit of the guarantee against testimonial compulsion embodied in Article 20(3) of the Constitution of India, it must be shown, firstly, that the person who made the statement was "accused of any offence"; secondly, that he made this statement under compulsion. It was also observed that an accusation which would stamp him with the character of such a person was leveled only when the complaint was filed against him, by the Assistant Collector of Customs, complaining of the commission of offences.

27. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , it was observed that Sea Customs authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rate of duty and penalty prescribed in the Sea Customs Act and that a statement u/s 171A(4) did not stand at par with a confession so that it had to be taken as a whole or rejected as a whole.

28. In *Nishi Kant Jha Vs. The State of Bihar*, , it was observed that even in regard to statements portions whereof are inculpatory against the maker and other portions are not, inculpatory portion can be accepted if the exculpatory portion is found to be inherently improbable.

29. It would be seen that this statement which at first flush appears to be quite exculpatory is, in fact, not so as basic facts indicating the concern of the respondent in the activity of smuggling gold into India and Indian currency and other currency out of India have been admitted. The exculpatory portion smacks of a laboured attempt at concealing the fact that Indian currency and foreign

currency was supplied by the respondent. The absurdity is, however, patent. If the respondent was not to pay and take the smuggled gold why he should be taken to the Hotel Airlines ? Is it imaginable that in an activity like the instant one a complete stranger is inducted just to witness what happens ? The inculpatory portion is, Therefore, clearly usable and the exculpatory portion liable to downright rejection. This statement was recorded in the presence of Piare Lal (PW6) and A.S. Sawhney (PW10) and the witnesses are unanimous that the respondent made it voluntarily. There is no discernible reason for not believing these witnesses when they say so. It is pointed out by Shri Harjinder Singh that the statement was recorded in English, a language not known to the respondent and there is nothing on the face of the document to show that it was read over to Harbans Lal and he acknowledged the correctness thereof before putting his signature in Mundi language. "When it is borne in mind that the respondent has admitted in his statement u/s 342, Criminal Procedure Code, that he was interrogated and a statement was prepared which he was required to sign and he signed (although according to him he did not say what Ex. PW5/A purports to contain) and it is remembered that the respondent was apprehended soon after the smuggling was detected and the credit of the witnesses in whose presence the recording was made is not open to challenge, the fact that it was recorded in English is of no moment. B.K. Kalia, on being asked, stated that it is neither the practice nor the requirement that it should be endorsed that the statement was read over and explained. In the circumstances, we find no reason to disbelieve them when they say that it was actually explained to the respondent who acknowledged the same to be true and correct.

30. This statement obviously provides necessary corroboration to the version of Charles Maloney.

III. Arrest of Rasik Lal G. Shah.

31. Rasik Lal G. Shah was found staying in the premises of Hotel Airlines and was arrested by the Customs authorities there. This small but highly significant circumstance corroborates the version of Charles Maloney in that Rasik Lal G. Shah would be in Hotel Airlines and serves as an important link with the circumstances already discussed and yet to be discussed.

IV. Recoveries effected at the time of the arrest of Rasik Lal G. Shah.

32. Rasik Lal G. Shah was found in possession of two letters written in Gujarati, photostat copies whereof are Ex. PW13/B and Ex. PW13/C. The first letter, translation whereof is Ex. PW26/A, is addressed as "R.G. Shah c/o. Harbans Lal Bansi Dhar Sharaf, 73-E, Chandni Chowk, Delhi-6" while the other Ex. PW13/C, translation whereof is Ex. PW26/B, is addressed as "R.G. Shah c/o. Hotel Airlines, opposite to New Delhi Railway Station, New Delhi." Ex. PW13/B is the original and Ex. PW13/C is the copy thereof. Perusal reveals that a visible attempt appears to have been made to screen facts and persons. Hoory is described as Noora, Charles Maloney as Andre and the respondent as Punjabi Seth. There is,

however, little difficulty in discerning that this letter pertains to the transaction of gold smuggling on May 29, 1962 and the transaction which failed on account of the detection on June 27, 1962. The first part mentions the gist of the letter which had been received from Noora in these words:

We received from Andre 29.99 pink cream which you gave on 29-5-62 but it is found that 4.55 cream necklace are short. Please clarify the matter. Please see where the mistake is and how the shortage has occurred.

Reference is to the shortage spoken by Charles Maloney, i.e., balance of Rs. 25,000 still payable. There is a reference to Punjabi Seth in more than one context. Firstly, it is in regard to record of payment of cream having been kept. Secondly, it is in regard to the receipt of invitation card relating to the marriage of a girl. Then there is reference to something coded as tissue being given by Punjabi Seth and direction to carry the same. There is also a reference to a copy of the letter having been sent to the Hotel address. The fact that copy of such a letter was sent to the address "c/o. Harbans Lal Bansi Dhar Sharaf, 73-F, Moti Bazar, Chandni Chowk, Delhi" goes a long way to bring the respondent into the transaction pertaining to smuggling in gold and smuggling out currency. The fact that there is reference to the transaction of May 29, 1962, payment by Punjabi Seth and leaving of balance is no less significant. When this letter is read along with the wedding card, Ex. PW13/G-1 issued in connection with the marriage of Murty Devi, sister of the respondent fixed on June 29, 1962 (recovered from the personal search of Rasik Lal G. Shah) little doubt remains in the mind that Punjabi Seth referred to in the two letters is no other than the respondent himself as he was the person who had entered into the transaction on May 29, 1962 and who had been named as the person to whom gold which was smuggled was to be handed over in case Rasik Lal G. Shah did not turn up. It is pointed out by Shri Harjinder Singh that besides Punjabi Seth, there is mention of the name "Harbans Lal" as well in this letter and, Therefore, the reasonable inference is that Punjabi Seth and Harbans Lal are two different persons. We see no force in this contention. Perusal of the whole letter along with the invitation card leads to the inference mentioned above. Punjabi Seth is mentioned in connection with the person with whom the transaction had been entered and Harbans Lal is mentioned only in the context that a copy of the letter had been sent at his address. What was sought to be concealed was the identity of the person involved in the transaction and not the person at whose address the copy of the letter was sent. There was, Therefore, nothing exceptional about mention of the name of the respondent in that context.

33. Another letter that was recovered during the personal search of Rasik Lal G. Shah is Ex. PW13/E. This letter which bears the date June 25, 1962 was written by Rasik Lal G. Shah to Charles Maloney who is described as Andre and there is reference to information from Noora and request for offering "15 pearls". Once again there is a reference to a code word "necklace". These letters bring in the respondent inextricably and provide a number of corroborating circumstances.

V. Recovery of phonogram from premises of Harbans Lal Bansi Dhar.

34. Phonogram, copy whereof is Ex. PW11/C, was seized during the search of the business premises of the respondent on June 27, 1962. It is in respect of a telegram sent by Rasik to J. Modi of Bombay by making use of the telephone installed at the business premises of the respondent on May 29, 1962. This shows association between the respondent and Rasik Lal G. Shah and is a pointer to their closeness.

35. Shri S.L. Watel, learned Counsel for the appellant, has submitted that besides the circumstances noted above, there is another circumstance provided by the statement of Rasik Lal G. Shah Ex. PW14/B which was recorded by the Customs Officer on June 27, 1962 after his arrest. The argument is that this statement is in the nature of a confession and is usable u/s 30 of the Indian Evidence Act. One of the requisites for admissibility of the confession of one accused against the other is that there should be a joint trial. In the instant case a joint trial did start but could not last long as the respondent absconded. Accordingly, the case of the respondent was separated u/s 512 of the Criminal Procedure Code, 1898. Section 30 of the Evidence Act is thus not attracted and this statement is not usable against the respondent.

36. In regard to the double test requirement spoken of in Sarwan Singh Vs. The State of Punjab, , Gajendragadkar, J., (as he then was) made the following observations as regards the extent of corroboration:

It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

37. The various corroborative circumstances discussed above, when considered in the context of the evidence of Charles Maloney, corroborated as it is, by his statements before the Customs authorities and reaffirmed by his plea of guilt and the conviction which followed leave no manner of doubt that the evidence of Charles Maloney can reasonably and safely be accepted as true and conviction recorded by acting upon the same.

38. What remains to be seen is whether the offence of criminal conspiracy pertaining to smuggling of contraband gold into India and smuggling of Indian currency and foreign exchange out of India is made out or not. It may be mentioned here that about criminal conspiracies it is well-known that these are hatched in secrecy and executed in darkness and, Therefore, in the very nature of things the evidence pointing to conspiracy, that one should expect, would be circumstantial or inferential. It is in the light of this axiom that the salient

features of the prosecution evidence have to be examined and analysed. The first and important circumstance is that the conspiracy was afoot when the respondent joined sometime prior to May 29, 1962. The second is that it was conveyed through Charles Maloney that a gold watch of particular make, etc., be also brought along on the next visit and Charles Maloney brought one along with 14 kilograms of contraband gold when he landed at Delhi on May 29, 1962. This was obviously meant for the respondent to whom it was delivered at Hotel Airlines along with the gold soon after arrival. The third is that the respondent went to Hotel Airlines along with the foreign exchange which he had managed and paid the price of the contraband goods leaving a balance of Rs. 25,000. It would, in the circumstances, be reasonable to draw the inference that the smuggling into India of contraband gold and smuggling out of India Foreign exchange were pursuant to a pre-conceived and agreed upon plan. The fourth is that subsequently on June 27, 1962 when Charles Maloney brought 15 kilograms of contraband gold, he carried the instructions to deliver the gold to the respondent in case Rasik Lal G. Shah did not turn up. He also carried the instructions that there was a shortfall of Rs. 25,000 in respect of the earlier transaction.

39. On behalf of the appellant it is submitted that the evidence noted above clearly points to the inference that the respondent was concerned in the importation of contraband gold and exportation of foreign exchange and Indian currency besides the inference that he was concerned in the dealing with smuggled gold and, Therefore, both parts of Section 167(81) of the Act are attracted. The rival contention is that the only inference that can be drawn is that the respondent was in a way concerned with dealing with smuggled gold and, Therefore, the charge u/s 120B of the Indian Penal Code, as framed, cannot be said to have been made out and, Therefore, the acquittal in regard to this charge is justified.

40. We are of the opinion that there is force in the contention of Shri S.L. Watel and the same must be accepted. Section 167(81) of the Act says:

_____ Section of this Offences Act to which
Penalties offence has reference _____

81. If any person knowingly, and General such person shall on with intent to defraud the conviction before a Government of any duty payable Magistrate be liable to thereon, or to evade any prohibition imprisonment for any or restriction for the time term not exceeding being in force under or by virtue two years, or to fine, of this Act with respect thereto or to both. acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully remo- ved from a warehouse or which are chargeable with a duty which has not been paid or with respect to the

importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid; or if any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods, Nothing in the second column of the above Schedule shall be deemed to have the force of law.

41. The second part of Section 167(81) which in substance pertains to importation and exportation of contraband goods takes within its sweep a person who physically brings into India contraband goods as well as a person who is privy to such a transaction. This is clear from the use of the expression "in any way knowingly concerned". In *Radha Kishan Bhatia Vs. Union of India (UOI) and Others*, , the Supreme Court while examining the provisions of Section 167(8) of the Act wherein the expression "concerned in the offence" occurs interpreted it to mean "interested", "involved" or engaged" or "mixed up". This expression gets a wider connotation when it is preceded by words "in any way". When it is borne in mind that such an activity as in this case cannot be undertaken unless there is a ready market for contraband goods and there is a person ready to take delivery of such goods, the fact that the respondent had asked for the gold watch besides the illicit gold and had procured foreign exchange for making payment immediately on arrival demonstrably shows that the respondent was concerned in the importation of contraband gold and exportation of foreign exchange. The facts of the case, as stand proved, make out a case far from a case where a person comes into picture after the contraband goods have been smuggled and he becomes agreeable to deal with the same. If it is vehemently submitted by Shri Harjinder Singh that the Supreme Court has categorically held in *Radha Kishan Bhatia Vs. Union of India (UOI) and Others*, that the true scope and effect of the words "concerned in" are that the person to be penalised must be interested or involved or engaged or mixed up in the commission of the offence at a stage prior to the completion of the offence of illegal importation and that the offence of importation is complete when the goods crossed the customs frontier. It is undoubtedly so. However, these observations, it may be mentioned, are in respect of the penalty part of Section 167(8) of the Act which pertains to importation and exportation of goods in contravention of the prohibition or restriction by or under Chapter IV of the Act. As already mentioned above, the expression "in any way concerned" is of still wider amplitude. It not only applies to a person who may have been actually concerned in some way or the other in smuggling but also, inter alia, applies to persons who may have come into possession of goods even after smuggling was over: *Sachidananda Benerji, Assistant Collector of Customs Vs. Sitaram Agarwala and Another*, . For drawing inference in regard to existence of the criminal conspiracy for importation and exportation of contraband gold and foreign exchange with such knowledge and intention as spoken in Section 167(81), considerations which have bearing are: Is the involvement a solitary act or a chain of acts or transactions ? How and in what circumstances and at whose instance or with whose connivance the act or

transaction was initiated ? Who provided the consideration ? What was the nature and extent of the participation of the person proceeded against ? Bearing all these considerations in mind, we are of the opinion that the involvement of the respondent in the importation of contraband gold and exportation of Indian currency and foreign exchange started some time prior to May 29, 1962 and, Therefore, the second part of Section 167(81) is clearly attracted.

42. It is submitted by Shri Harjinder Singh that so far as the accusation of exportation of Indian currency and foreign exchange is concerned, it is in fact a contravention of restriction under Sub-section (2) of Section 8 of the Foreign Exchange Regulation Act, 1947 which is punishable u/s 23 of that Act. It is also submitted that proviso to Sub-section (3) of Section 23 lays down that no complaint can be made unless the person accused has been given an opportunity of showing that he had the necessary permission and in this case no such notice was ever served on the respondent. This argument is wholly fallacious. Sub-sections (1) and (2) of Section 8 and Section 23A of the Foreign Exchange Regulation Act, 1947 and Section 19 of the Act in so far as they are relevant are as under:

8(1) The Central Government may, by notification in the Official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.

(2) No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank, take or send out of India any gold, jewellery or precious stones or Indian currency or foreign exchange other than foreign exchange obtained by him from an authorised dealer.

23A. Without prejudice to the provisions of Section 23 or to any other provision contained in this Act, the restrictions imposed by Sub-sections (1) and (2) of Section 8,...shall be deemed to have been imposed u/s 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly.

Sea Customs Act, 1878.

19. The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government.

43. A perusal of these provisions would show that Indian currency or foreign exchange cannot be taken out of India without general or special permission of the Reserve Bank of India. This restriction by virtue of Section 23 of the Foreign Exchange Regulation Act, 1947 is deemed to have been imposed u/s 19 of the

Act. What Section 23A does is to incorporate by reference into the provisions of the Sea Customs Act by deeming the restrictions u/s 8 of the Foreign Exchange Regulation Act to be the prohibition and restrictions u/s 19 of the Act. It is a well-accepted Legislative practice to incorporate by reference, if the Legislature so chooses the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and objects of that Act. Accordingly, any notification u/s 23A in respect of Section 8 shall be read, as notification u/s 19 of the Act, i.e., by reference to Sub-sections (1) and (2) of Section 8 of the Foreign Exchange Regulation Act it becomes a part of Section 19 of the Act. What is of importance to note is that only prohibition or restrictions imposed are incorporated in Section 19 but the converse is not true. The offence under consideration is, Therefore, one under the Act and not under the Foreign Exchange Regulation Act, 1947. The proviso to Sub-Section (3) of Section 23 has, Therefore, no application, whatsoever, for the simple reason that the offence is not under the Foreign Exchange Regulation Act nor the proceedings were instituted under that Act.

44. The consideration that the respondent was actually concerned in the importation of contraband gold apart, he cannot even otherwise escape the liability u/s 120B of the Indian Penal Code inasmuch as he was found guilty of the substantive offence punishable u/s 167(81) of the Act for a charge of dealing with contraband gold. The complaint against the respondent was, inter alia, u/s 120B of the Indian Penal Code read with Section 167(81) of the Act and sanction for the prosecution was also for the same offence. In the circumstances, it is a case of omission of the words "dealing in contraband gold" in the charge that was framed. This omission is an irregularity which cannot act as a bar to the recording of conviction for conspiracy in dealing with smuggled gold. No consideration of any prejudice having been caused to the respondent on account of the omission can be said to arise. Not only the respondent was fully informed about the case of the prosecution but was also charged for the substantive offence of dealing with smuggled gold and was actually convicted and that conviction was not challenged by way of appeal.

45. For the forgoing reason, the conclusion drawn by the learned Additional Chief Metropolitan Magistrate, New Delhi, that there was insufficient evidence for holding that the respondent was a member of the criminal conspiracy cannot be sustained. It is somewhat strange besides being illogical as the learned Magistrate by acting on the very same evidence found the respondent guilty of the offence u/s 167(81) of the Act.

46. As a result, we accept Criminal Appeal No. 104 of 1975 and setting aside the acquittal convict the respondent for the offence punishable u/s 120B of the Indian Penal Code read with Section 167(81) of the Act and sentence him to rigorous imprisonment for two years. As regards Criminal Revision No. 73 of 1975, it is not the practice of this Court to interfere with the discretion of the trial Court in imposing sentence but the sentence in this case is grossly

disproportionate to the crime in extent and gravity. We, Therefore, allow the revision and enhance the sentence to rigorous imprisonment for one year and a fine of Rs. 2,000. In default of payment of fine the respondent shall undergo rigorous imprisonment for six months. It is, however, directed that the substantive sentences of imprisonment would run concurrently. We do not agree that the part played by the respondent is lesser than that of R.G. Shah.

47. Shri Harjinder Singh has informed that the respondent remained in judicial custody for quite a long time and that in accordance with the law as it now stands, such period has to be taken into consideration for working out the unserved period of imprisonment. Accordingly, we direct that before lodging the respondent in jail, the trial Court would look into this aspect and work out the period of unserved sentence; if any.