

(1971) 12 DEL CK 0023

In the Delhi High Court

Case No : Criminal Appeal No. 14 of 1969

Assistant Controller of Customs, New Delhi

APPELLANT

Vs

Kedar Nath

RESPONDENT

Date of Decision : 13-12-1971

Acts Referred:

Citation : (1972) ILR Delhi 775

Hon'ble Judges : Hardayal Hardy, C.J.; V.S. Deshpande, J

Bench : Division Bench

Advocate : V.D. Mahajan, K.K. Luthra and O.P. Malviya, for the Appellant;

Judgement

Hardayal Hardy, C.J.

(1) This appeal has been brought on leave granted by this Court u/s 417(3) Criminal Procedure Code. The appellant is Assistant Collector of Customs, New Delhi while the respondent is Kedar Nath, a bullion broker of Delhi.

(2) On a complaint filed by the appellant for an offence u/s 135(b) of the Customs Act, 1962 and Rule 126P(ii) of the defense of India Rules, 1962 the respondent was convicted by a Sub-Divisional Magistrate and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000.00, or in default of payment of fine to undergo rigorous imprisonment for six months under each count with a direction that the sentences shall run concurrently.

(3) The respondent filed an appeal against the judgment of the trial court in the Court of Session and by an order made by Shri M. L. Jain, Addl. Sessions Judge Delhi on 13-8-1968 the appeal was accepted and the judgment of the trial court was reversed.

(4) The appellant has now come up to this Court in appeal for reversal of the judgment of acquittal passed by the learned Addl. Sessions Judge.

(5) The facts are that on 8-11-1964 the Station House Officer Kotwali, Chandni

Chowk Delhi received information and in consequence of that information he posted himself at the crossing of Jogiwara and M.aliwara, Nai Sarak Delhi. After some time he found a taxi from which the respondent alighted along with another person and as a result of the search of his bedding in the presence of witnesses 17 bars of gold weighing 10 tolas each bearing foreign marks were recovered from the shoulder pads of a woolen coat found in the said bedding. On search of his person a sum of Rs. 31.00 and a bill No. 16140 dated 31-10-1964 and a letter-head of Messrs Kasturi Lal and Co. Bombay containing some accounts in Hindi and a mention of 17 bars of gold were recovered from the respondent in the presence of the said witnesses.

(6) The property was handed over to the Customs authorities who also held proceeding under the Customs Act after an order was obtained from the Addl, District Magistrate Iii Delhi. Ultimately the Assistant Collector of Customs filed a complaint praying for conviction of the respondent u/s 135(b) of the Customs Act and Rule 126 P(ii) of the defense of India Rules on the ground that the investigation made by the Customs authorities revealed that the respondent being a bullion broker had brought the afore-said gold from Bombay knowing the same to be smuggled and had concealed the same in the shoulder pads of his coat to avoid detection.

(7) Ten witnesses were examined on behalf of the complainant, but of these Bakshi Damodar Das (Public Witness 2), Raghunath Prasad (Public Witness 6), Chandu Lal (Public Witness 7), Prakash Lal (Public Witness 8) and Ramji Dass (Public Witness IC) were alleged to be eye-witnesses of the recovery of gold from the respondent's bedding vide memo Ex.PW2/A and a bill marked "Z" from his personal search vide Ex.PW2/B. Bk. Damodar Dass and Chandu Lal alone supported the prosecution story. The other witnesses went back on their statement and as such they were declared hostile and were cross-examined by the complainant. Parkash Lal and Ramji Dass deposed that they arrived at the spot after the alleged recovery had been made. Raghunath Prasad deposed in his evidence-in-chief that gold was recovered from the coat of the respondent but he resoled from that statement in cross-examination. Chundu Lal supported the prosecution story but he has been disbelieved by the Addl. Sessions Judge on the ground that he was not the attesting witness of any of the afore-said memos. The Addl. Sessions Judge also observed that Chandu Lal's statement was recorded by the Customs department for the first time on 1-1-1965 i.e. 1.075 months after the alleged recovery of gold from the respondent. There was also evidence to show that this witness was residing in the same building in which the respondent was residing. He had also appeared as a witness against the respondent in another case even before the institution of the present case and yet when he was cross examined he gave out that he did not know as to whether he had appeared in a case against the respondent or not. According to the learned Addl. Sessions Judge, this raised two inferences, firstly that he was a false witness and secondly, that he was inimically disposed towards the respondent. I shall deal with the evidence of this witness at a later stage.

(8) I agree with the learned Addl. Sessions Judge that Prakash Lal and Ramji Dass who had attested the recovery memos had resiled from their statements and cross-examination by the complainant's counsel did not bring out any material from which it could be inferred that their earlier statements should be preferred to their deposition in Court. The testimony of these witnesses will have to be discarded and the case against the respondent will have to be judged in the light of evidence of Bk. Damodar Dass, Raghunath Prasad and Chandu Lal.

(9) We have already said that Raghunath Prasad supported the prosecution case in his evidence-in-chief. His cross-examination was however deferred and he was cross-examined on 3-11-1967 after a delay of 13 days when he went back on his evidence-in-chief and deposed that the clothes and other articles were lying on the ground when he reached there. He was shown his previous statement before the Customs (Ex. PW4/A) and he admitted that it was in his own hand but he said that some portions of that statement were not correct. He also stated that he did not know that the bedding and the attached case belonged to whom, but he added that gold had come out of one of the shoulder pads of the coat. He said this with reference to 17 bars of gold and not to the remaining bars. He also stated that when he appeared before the Customs he remembered all the incidents of the story, but he did not remember those incidents when he appeared in Court.

(10) We have no doubt that this witness was won over by the respondent during the period his cross-examination was deferred. Otherwise there is no reason why he should go back on his evidence-in-chief in which he had expressly stated that gold had been recovered from the shoulder pads of the coat. The recovery of gold was made in the presence of the respondent and at that time none else besides the respondent was present excepting some members of the public who had collected there. The search of the respondent was made near his house. According to Bk. Damodar Dass, he alighted from the taxi. Meanwhile his other companion managed to get away. The bedding and the attached case were searched in the presence of the respondent after he had alighted from the taxi. The coat was inside the bedding and it is from that coat that 17 bars of gold were recovered. The respondent did not say anything at that time that the bedding did not belong to him. It is only after gold was recovered from the coat that the respondent turned round and said that it did not belong to him.

(11) We now turn to the evidence of Bk. Damodar Dass. He stated that on receipt of information that the respondent was in possession of smuggled gold he as Station House Officer Kotwali took position near a shop on Nai Sarak and found a taxi coming there at about 9 A.M. He saw the respondent and one other person alighting there from. The respondent took out a bedding and placed it on the road. He also paid the taxi fare while the other person went away. Bk. Damodar Dass apprehended the respondent and on checking the bedding he found a coat Ex.PI and from its shoulder pads he recovered 17 bars of gold (Exs. P2 to P15) each weighing 10 tolas. He took the gold and the coat in

possession vide memo Ex.PW2/A. He then carried out a personal search of the respondent and recovered a sum of Rs. 31.00 and a bill marked "Z". The money and the bill were taken into possession vide memo Ex. P"W2/B. He arrested the respondent u/s 550 Criminal Procedure Code as a suspect for being found in possession of stolen property and made a report in the daily diary. On 11-1.1-1964 he handed over the property to Shri P. L. Bhatia, Inspector Customs (Preventive) after informing him about the details of the case.

(12) The defense set up by the respondent in his examination u/s 342 Criminal Procedure was that during communal riots Damodar Dass had arrested him and Chandu Lal had been made a false witness. He also stated that Damodar Dass had once tried to enter his house forcibly along with Chandu Lal. Chandu Lal was living in the house of the respondent and was arrested and convicted for gambling at the instance of the respondent. Bk. Damodar Dass and Chandu Lal were pushed back and the respondent refused to allow Damodar Dass to carry out the search. He further stated that Chandu Lal had black-mailed his uncle and was receiving Rs. 50.00 per mensem from him four years ago.

(13) In support of his defense, the respondent examined Suraj Prakash (DW3) who stated that about four years ago Bk. Damodar Dass and his three or four companions who were not in uniform, had come there and conducted a search in the house of the respondent. Suraj Prakash and Goverdhan Dass (DW4) were called and a search was conducted in their presence. Nothing was recovered. But Bk. Damodar Dass when requested by the respondent to give in writing that nothing had been recovered from his room, refused to do so. This resulted in an exchange of hot words and Bk. Damodar Dass threatened the respondent that

(14) In cross-examination the witness admitted that he had no knowledge as to how this case of gold had been set up against the respondent although he did know that after that threat it was being. said that Bk. Damodar Dass had got up a case against the respondent. But the witness did not inquire as to what type of case it was.

(15) Goverdhan Dass (DW4) was the other witness examined by the respondent. He supported the story of Suraj Prakash but admitted in cross-examination that he was not called by the Customs officers nor did the respondent produce him before them. The respondent had also not taken any action against Bk. Damodar Dass nor did the witness know as to what was the quantity of gold in the present case.

(16) An exemption of the evidence of Bk. Damodar Dass when read in the light of the evidence of Raghunath Prasad convinces us that the prosecution story about the recovery of gold from the shoulder pads of the coat found in the bedding which the respondent had himself placed on the road, is fully established.

(17) Counsel for the respondent urged that Bk. Damodar Dass was a Station House Officer of Kotwali Police Station. If he had received information that the respondent was arriving from Bombay with smuggled gold it was his duty to have

informed the Customs authorities. In that case the arrest and seizure of the respondent would have taken place in the presence of Customs authorities. On the other hand, the prosecution case was that the police had arrested the respondent u/s 54 Criminal Procedure Code. This was apparent from the application made by Shri P. L. Bhatia, Inspector Customs (Preventive) before the Additional District Magistrate Iii in which it was stated that 17 gold bars had been recovered from the respondent on the suspicion of stolen property. The argument of the learned counsel for the respondent was that the information received by Bk. Damodar Dass was that the respondent was in possession of smuggled gold and that from his personal search in addition to Rs. 31.00 a bill bearing No. 16140 dated 31-10-1964 on the letter-head of Messrs Kasturi Lal and Co. Bombay which contained some accounts in Hindi and a mention of 17 bars of gold, was recovered from the respondent. In this state of evidence, there was no question of the respondent being arrested u/s 54 Criminal Procedure Code because that section had hardly any application to the facts of the present case.

(18) Prima facie the argument presented by the learned counsel for the respondent appeared attractive and we asked the counsel for the parties to cite authorities as to whether Section 54 Criminal Procedure Code empowered the police officer to arrest a person without an order from a magistrate and without a warrant. Counsel for the appellant referred to the first and fourth clauses of Section 54(1) Criminal Procedure Code which read as under :-

"54(1)Any police-officer may, without an order from a Magistrate and without a warrant, arrest, first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;"

AND submitted that although the first clause of Section 54(I) may not apply the fourth clause certainly did apply. He invited our attention to a Bench decision of Kerala High Court in Krishnan Sukumaran Vs. Enforcement Officer, Cochin, . That was a case where Indian currency had been seized by a police officer suspecting commission of some offence. The offence alleged in that case was one u/s 19(2) of the Foreign Exchange Regulation Act, 1947. A police officer who was a Sub-Inspector of police was required to assist the Enforcement Officer under the Foreign Exchange Regulation Act in the enforcement of that Act. The offences under that Act are non-cognizable offences and are to be investigated by the officers of Enforcement and prosecuted by them. Section 25A of the Act empowers and requires officers of police, among others, to assist officers of Enforcement in the enforcement of the Act. Section 550 Criminal Procedure Code also empowers a police officer to seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which

create suspicion of the commission of any offence. It was in these circumstances that the Division Bench held that the seizure of the currency notes by the Sub-Inspector from the possession of the petitioner was lawful. In the present case, the seizure of gold is certainly within the purview of Section 550 of the Code of Criminal Procedure. But the Station House Officer Kotwali was not assisting any officer of Customs nor is there any case of an officer from the Enforcement Directorate of the Foreign Exchange Regulation Act being assisted in the case. S.H.O. Kotwali. certainly had the power to seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which created suspicion of a commission of any offence. The seizure of the property was Therefore not within S.54 of the Code of Criminal Procedure but u/s 550 of the Code and we find from the record that this is precisely what the Station House Officer Kotwali Police Station did. Since the seizure of the property was one u/s 550 of the Code of Criminal Procedure the arrest of the respondent may not come within the purview of the first clause of S. 54(1) of the Code. The question however is whether it does come under the purview of the fourth clause of Section 54(1) ? The authority from Kerala High Court Therefore does not go to the length of invoking Section 54 of the Code of Criminal Procedure as it was confined only to the operation of Section 550 of the Code.

(19) Counsel for the appellant also cited a decision by a Single Judge of Gujarat High Court in Superintendent Customs and Central Excise Vapi Vs. Raichand Lakhmarsingh Shah, . We however do not find if that authority can be of any use to the argument of the learned counsel, hi that case a police officer had seized vehicle and the goods carried on it and conveyed the same to the Customs house. Subsequently the same were seized by the Customs officer in exercise of his powers u/s 110 of the Customs Act on the ground that the goods which were carried in the vehicle were smuggled goods. The question before the Court was whether a magistrate could order the Superintendent of Customs and Central Excise to return the vehicle to a person who claimed to be the owner of it on condition of his giving security and undertaking to produce the vehicle in court whenever so ordered. It was found that there was nothing to show that seizure by the police was u/s 550 of the Criminal Procedure Code and Therefore the provisions of Section 523 of the Code did not apply. The magistrate had Therefore no power to direct that the vehicle should be returned to the person concerned.

(20) The next case cited by the learned counsel is a division Bench judgment of Gujarat High Court in Assistant Collector Customs Baroda and another v. Mukbujusein Ibrahim Pirjada 1970 Criminal Law Journal 1305. The goods in that case had been seized by the police from the possession of the accused but thereafter the Customs authorities got the custody of those goods. It was held that under these circumstances, it could not be said that the goods had been seized by the Customs authorities under the Customs Act, 1962. The presumption arising u/s 123(1) and (2) of the Customs Act, 1962 could not

Therefore arise in that case. In the body of this judgment however there is a mention that the police officer who had seized gold from the possession of the accused had also arrested the accused under the fourth clause of Section 54(1) of the Code of Criminal Procedure, which has been re-produced above.

(21) This clause apparently supports the action taken by the Station House Officer Kotwali for he had reasonable suspicion that the respondent had committed an offence with reference to gold in his possession. He could Therefore not only seize gold but he could also arrest the accused under the fourth clause of Section 54(1).

(22) Counsel for the respondent however submitted that under the Code of 1861, a person found with stolen property in his possession could be arrested without warrant and it was property found to have been stolen that came under the clause and not anything suspected to have been stolen. Under the present clause however a reasonable suspicion as to its being stolen property is sufficient. In the present case the Station House Officer Kotwali knew that the property was neither found to be stolen nor was there any reasonable suspicion as to its being, stolen property. It does not seem necessary for us to go into that controversy in the case as we might assume without deciding the point that the Station House Officer Kotwali had the power to seize gold u/s 550 Cr.P.C. but he did not have the power to arrest the respondent u/s 54 of the Code. But a mere irregularity in the arrest of the respondent would nevertheless not vitiate the trial.

(23) Counsel for the respondent submitted on the other hand that in a decision of Bombay High Court in *Candri Bawoo v. Emperor* Atr 1925 Bombay 131, a police officer who was not specially authorised by the Commissioner of Police as required by the Bombay Prevention of Prostitution Act, 1923 could not arrest a woman u/s 10(1) without a complaint u/s 3 of the Act. It was held that the magistrate had no jurisdiction u/s 190 of the Code of Criminal Procedure to try a woman so wrongly arrested for the offence unless a complaint within the meaning of Section 4(l)(h) was made to him. It would appear that in that case the magistrate had no real jurisdiction and Therefore it was not a case which fell within the scope of mere irregularities dealt with in Section 537 of the Code of Criminal Procedure. In the present case the trial of the respondent has proceeded on a complaint filed by the Assistant Collector of Customs and Therefore though the original arrest of the respondent may be irregular or illegal his subsequent trial is on a complaint of which the magistrate could take cognizance.

(24) Counsel for the appellant has on the other hand cited a decision of the Supreme Court in *Niranjan Singh Vs. The State of Uttar Pradesh*, where it was said that the Criminal Procedure Code in laying down the omissions or irregularities which either vitiate the proceedings or not does not anywhere specifically say that a mistake committed by a police officer during the course of investigation can be said to be an illegality or irregularity. Investigation is certainly not an inquiry or trial before the Court and the fact that there is no

specific provision either way in Chapter Xlv with respect to omissions or mistakes committed during the course of investigation except with regard to the holding, of an inquest is a sufficient indication that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form an infirmity in the inquiry or trial.

(25) Counsel for the appellant also cited a decision of the Judicial Committee of the Privy Council in AIR 1944 73 (Privy Council) where an accused who was not a British subject but a native of Jind State committed an offence within the jurisdiction of a British Indian Court. He was arrested in the State of Jind by the British Indian Police and was subsequently extradited and handed over to the British Indian authorities by the Jind State. He was convicted by the British Indian Court, and his contention that his arrest having been effected in the Jind territory by a British Indian officer was illegal and that the illegality of his arrest vitiated the whole subsequent proceedings. It was held that when the accused was presented for trial before the British Indian Court he had been validity surrendered to that Court by the Jind authorities and Therefore the proceedings before that Court were regular and any order and the validity of the trial and conviction of the accused should not be affected by any irregularity in his arrest.

(26) In the present case, the respondent was summoned by a process issued by the Court of a Sub-Divisional Magistrate on a complaint filed against him by the Assistant Collector of Customs, He was Therefore validly brought before the Court. Even if there was some illegality which we do not concede ,when he was arrested by the Station House Officer Kotwali Police Station, that would by no means vitiate the trial.

(27) We now turn to the evidence of Chandu Lal (Public Witness 7). Harbans Lal (Public Witness 9) mentioned that the name of the informant was to be found in the list of witnesses cited by the complainant. defense witnesses have stated that Chandu Lal was a police tout. He has been moving about in the company of Bk. Damodar Dass. He is also stated to be addicted to Satta and gambling and was residing in the same building in which the respondent was residing. It may be that Chandu Lal was a police informant although neither Bk. Damodar Dass nor the complainant A. L. Nanda admitted this fact. In fact no such questions were put to them. The question however is whether he was present at the time when the respondent was arrested and a search was carried out by Bk. Damodar Dass. For this we have to turn to the statement made by the respondent himself before Shri S. M. Raza, Superintendent of Customs and Central Excise. According to the evidence, the respondent was examined by the Customs authorities on 12-11-1964 and 13-11-1964. These statements are Exhibits PW9/A and PW9/B. In Ex. PW9/B the respondent made an attempt, to exculpate himself completely and denied that any search was made by Bk. Damodar Dass. All he said was that he had left his house for the bazar to purchase vegetables. A big crowd had gathered in the bazar at Nai Sarak near Maliwara. The respondent also went there. At that time Bk. Damodar Dass, the thanedar of Kotwali. Chandu Lal of

House No. 1300 Baidwara and Satya Narain of M/s. Bhanwar Lal Satya Narain were present there. About 10 or 15 persons were also present. Damodar Dass asked Satya Narain to accompany him to Kotwali. He was holding a woollen coat and a cloth bag in his hand at that time and said that gold had been recovered from Satya Narain. Bk. Damodar Dass also asked him to go to Kotwali for giving evidence. and Therefore all these persons and one other person whose name he did not know, went to Kotwali.

(28) This statement was recorded by the Superintendent of Customs New Delhi five days after the occurrence. Before that statement the respondent had made another statement on 12-11-1964 wherein he stated : "I know that I have appeared in the Customs office in connection with the case of 170 (One hundred and seventy) tolas of gold, recovered from me by the police of Kotwali, Chandni Chowk, Delhi. on 8-11-1964 and for which I was arrested. I have been explained the details of Section 193 and 228 Indian Penal Code and whatever statement I am making is correct and I will give a true reply to whatever is asked from me."

(29) After making the above statement and giving certain particulars about his past career, the respondent requested that his further examination may be postponed as he was not feeling well due to pain and wounds in his legs. He however promised that he would again appear in the Customs office at 10 A.M. on 13-11-1964. When he appeared on the following day he gave a different version and denied that any gold was recovered from him, but admitted that Chandu Lal was one of the persons who was present with the Sho police near Maliwara when he left his house to buy vegetables from the bazar. The presence of Chandu Lal is thus admitted by the respondent. The circumstance whether he signed attestation memos or not has Therefore no significance. Chandu Lal, according to his statement is a broker of silver while the respondent is a bullion broker. If they were both residing in the same building and the respondent had come from Bombay on 8-11-1964 and had alighted from a taxi near his house, Chandu Lal was probably aware of what had taken the respondent to Bombay. His being a police informant, is Therefore a circumstance that supports the truth of the prosecution case because it was on the basis of the information received by Sho Kotwali that the latter was waiting at the crossing of Jogiwara and Maliwara. Chandu Lal may be addicted to gambling and satta but it is persons of that type who know about the movements of others who are engaged in transactions of a shady nature like smuggling of gold. If he was an enemy of the respondent it was because of that enmity that he informed the police against him. Enmity is a double edged weapon. It can cut both ways. It is the enemy who alone can expose the other man engaged in a business of shady character.

(30) We have Therefore no hesitation in. relying upon the testimony of Chandu Lal. More so, when that testimony lends an assurance to the evidence of Bk. Damodar Dass and Raghunath Prasad.

(31) It was contended on behalf of the respondent that according to Bk. Damodar Dass, there was another person who also alighted from the taxi. He

went away. It was argued that that person was Satya Narain and that the coat and the bedding actually belonged to him. As soon as he saw the police he managed to get away, or it may be that the Station House Officer himself allowed him to go away. There is absolutely no evidence to connect Satya Narain with the offence. Satya Narain was examined by the Superintendent of Customs on January 1, 1965. He denied having had anything to do with the search carried out by the police on 8-1 L-1964, According to him, he was not even present in Delhi from 5-11-1964 to 15-11-1964 and then he again went out of station after staying in Delhi for four or five days and kept away for some time.

(32) In his statement u/s 342 Criminal Procedure Code the respondent did not give any Explanation about the other man who had alighted from the taxi with him. His statement before the Customs authorities (Ex. PW9/B) was that he had come out from his house to buy vegetables in the bazar and was asked by the police to accompany them to Kotwali for giving evidence. Then too he did not mention about the presence of another person. The prosecution case on the other hand was that he had arrived from Bombay and was alighting from the taxi when he was apprehended by the police. Bk. Damodar Dass had stated that on receipt of information that the respondent was bringing smuggled gold from Bombay he laid a trap on Nai Sarak at the crossing of Jogiwara and Maliwara and at about 9 A.M. a taxi came there from which the respondent and the other man alighted. The respondent's reply in his examination under Sec. 342 Cr. P.C. was that this was incorrect. He did not explain that the bedding belonged to some one else or that it belonged to the other man who had alighted from the taxi with him. The fact that gold was recovered from his search was also admitted by the respondent in his statement Ex.PW9/A before the Customs authorities. Counsel for the respondent however submitted that the statement Ex, PW9/A cannot be relied upon. He went to the length of stating that by the aforesaid statement of which an extract has already been reproduced, the respondent was merely trying to explain the nature of the case against him and not that any gold was recovered from him.

(33) We regret we cannot accept this view of the statement made by the respondent. The respondent himself admitted that he had made the above mentioned statements (Exs.PW9/A and PW9/B) which were in his hand but they were recorded before Mr. P. L. Bhatia. We have seen the original statements. They were written in Hindi and are in the handwriting of the respondent himself and have been made before Shri S. M. Raza, Superintendent Customs.

(34) The statement made by the respondent in Ex.PW9/A in which he admitted the recovery of gold from him and which has already been re-produced above is admissible in evidence. u/s 108 of the Customs Act, 1962 whenever a person is examined by an officer of Customs holding a certain status it is his duty to answer truthfully all the questions put to him. Such a statement is not hit by Section 25 of the Evidence Act and is admissible in Evidence. A Full Bench decision of Madras High Court in Collector of Customs, Madras Vs. Kotumal

Bhirumal Pihlajani and Others, , fully supports that view. The decision of the Supreme Court in Romesh Chandra Mehta Vs. State of West Bengal, , also shows that a Customs Officer is under the Customs Act of 1962,. not 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 S. 25 of the Evidence Act. The same view was also taken by the Supreme Court in an earlier case of Vallabhdas Liladhar and Others Vs. Assistant Collector of Customs, .

(35) It is no doubt true that such statements when made by accused persons before the Customs officer who must be taken to be person in authority, are not made on account of any inducement, threat or promise. In that case they would be admissible u/s 24 of the Evidence Act; but so far as Section 25 of the Act is concerned it was observed in the The State of Punjab Vs. Barkat Ram, , that u/s 25 of the Evidence Act, Customs officers are not police officers and statements made to them are not inadmissible u/s 25 of the Act. The respondent himself having written in his own hand that the gold had been recovered from his possession the admission made by him could be used against him, more so when there was no evidence at all that it was the result of any threat, promise or inducement.

(36) Learned Sessions Judge was aware of the above-mentioned authorities. He also held that the statement (Ex.PW9/A) recorded on 12-11-1964 can well be interpreted as meaning that the respondent had stated before the Customs officer that the recovery of 170 tolas of gold was made from his person. He however came to the conclusion that in view of the fact that the respondent resoled from the statement on the following day the statements made on 12-11-1964 has no evidentiary value, for according to the learned Judge the rule of interpretation is that the entire statement should be read as a whole. If the statement were to be treated as a confession there might have been some reason for the rule of interpretation laid down by the learned Judge. In the present case. however, the statement is used merely as an admission made by the respondent and we are not aware of any such rule as has been mentioned by the learned Judge. The statement Ex.PW9/A in so far as it related to the recovery of gold from him could be used as an admission. We Therefore cannot agree with the learned Addl. Sessions Judge that this statement has to be ruled out of evidence altogether.

(37) Counsel for the respondent next referred to a Full Bench decision of Lahore High Court in Emperor v. Santa Singh, Air 1944 Lah 339, and submitted that according to the prosecution the bed was lying on the road and if gold was recovered from the coat inside the bedding, the incriminating article could no be said to be in the possession or control of the respondent. The above decision has no relevancy at all. According to the prosecution, the bedding was removed from the taxi by the respondent. He did so after paying the taxi fare and he was seen doing so by the Sho Kotwali and other witnesses. It cannot Therefore be said

that the bedding was not in the possession and control of the respondent.

(38) Counsel for the respondent then referred us to the evidence of Ram Prakash (DW6). The coat from which gold was recovered bore the label "Prem Tailors". He deposed that the firm belonged to him. He had two shops, one in Chandni Chowk and the other on Nai Sarak. He stated that he did not know the respondent and had not sewn any coat for him. He however stated that he knew Satya Narain who was dead and that Satya Narain used to get coats sewn from him several times. He deposed that the coat did not belong to the respondent and he had told the Customs department about it. In cross-examination he admitted that he had not mentioned the name of Satya Narain before. He said he knew the measurements of Satya Narain but since he did not have a tape he could not tell his measurements.

(39) The evidence does not inspire confidence. He did not produce his account books nor did he produce the register in which the measurements of the customer are recorded. He did not bring even the measuring tape with him.

(40) An attempt was also made by the counsel for the respondent to show that the prosecution had not led evidence to prove that gold recovered from the possession of the respondent was foreign gold. The argument of the counsel is without any substance. Kishan Chand (PW4) was examined by the prosecution. He stated that on 11-11-1964 he had been summoned at the Kotwali where he was shown 17 bars of gold which he tested. The bars (Exs. P2 to P18) were found by him to be above 24 carat. Such gold according to the witness, is not available in the market. At that time the witness also prepared Ex. PW2/C and put his signature at Ex. PW2/C-1.

(41) The markings on gold show the names of foreign manufacturers and there is a notification to the effect that except with the general or special permission of the Reserve Bank of India and on payment of prescribed fee the import of gold bullion is prohibited by notification No. 12(11)F1/48 dated 25th August 1948 (as amended) issued u/s 8(1) of the Foreign Exchange Regulation Act, 1947. Section 135(b) of the said Act renders a person who acquires possession of or is in any way concerned in carrying on or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under the provisions of Section III liable for punishment to a term of imprisonment not exceeding two years or with fine or both.

(42) There is also a restriction on the possession or acquisition of gold under sub-rule (d) of rule 126H of the defense of India (Amendment) Rules, 1963 otherwise than mentioned in clauses (1) and (2) of the said Rules and any contravention thereof is an offence punishable under Rule 126P(ii).

(43) Counsel for the respondent lastly argued that the respondent had already been acquitted by the learned Additional Sessions Judge. The judgment of acquittal could not be reversed by this Court unless and until it was held to be perverse, or there were circumstances which enable this Court to review the

evidence. He also submitted that before the judgment was reversed it was incumbent upon this Court to take into consideration the points favorable to the respondent. Suspicion by itself howsoever great, would not constitute proof of the offence against the respondent. Reliance was placed by the learned counsel on two decisions of the Supreme Court in *Gian Mahtani and Another Vs. The State of Maharashtra and Another*, , and *Kami Ambu Vish v. The State of Maharashtra* 197UD Scc 503, Reference was also made to some of the earlier decisions of the Supreme Court.

(44) We have kept these principles in view and our decision to reverse the judgment of the learned Additional Sessions Judge is in keeping with these authorities.

(45) The result is that the appeal is accepted. The judgment of acquittal is reversed and the respondent is convicted of an offence u/s 135(b) of the Customs Act and Rule 126P(ii) of the defense of India Rules. He is sentenced to rigorous imprisonment for a period of six months and a fine of Rs. 500.00 or in default of payment of fine to further rigorous imprisonment for a period of three months.