

(1981) 02 KL CK 0016

In the High Court Of Kerala

Case No : Criminal Appeal No. 208 of 1978

Collector of Central Excise and Customs

APPELLANT

Vs

Kallatra Mohim and Others

RESPONDENT

Date of Decision : 18-02-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Customs Act, 1962 — Section 100, 101, 102, 104, 106
Evidence Act, 1872 — Section 32
Sea Customs Act, 1878 — Section 178A, 180

Citation : (1981) 02 KL CK 0016

Hon'ble Judges : Janki Amma, J

Bench : Single Bench

Advocate : M.B. Kurup and V.M. Prabhakaran Nair, for the Appellant; S.A. Nagendran and N.N.D. Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Janki Amma, J.—The Assistant Collector of Central Excise and Customs Kozhikode, is the Appellant. The appeal is against the order of acquittal of the five accused in C.C. No. 1154 of 1976, on the file of the Judicial Magistrate of the First Class. Kasaragod, of an offence punishable u/s 135(1) of the Customs Act. Originally there were six accused. The second accused, Hussain alias Hassan-kutty, could not be traced out and therefore the case as against him was split up and trial continued with the remaining accused on record. Accused 3 to 6 were subsequently ranked as accused 2 to 5.

2. The facts of the case are as follows: The Joint Superintendent of Police, Kasaragod, who have been examined as P.W. 1 in the case, got information that contraband articles were being transported in lorry MYD 2606 from Uduma in the early hours of 19th September 1972. P.W. 1 and his party intercepted the lorry at Chattanchal at about 5.30 a.m. There were five persons in the lorry, who were accused 1 to 4 in the present case and the absconding accused, Hussain. While the Police party was checking the contents of the lorry, the first accused, Kallatra

Mohim and the absconding accused, C. K. Hassan, took to their heels and escaped. On a search being conducted in the presence of independent witnesses, including P.W. 2, Village Officer, it was found that 24 gunny bundles of fabrics of foreign origin covered with tarpaulin and ice slabs and one motor cycle "YAMAHA" with registration No. WBP 5227 and markings HSI 11-1236 were found in the lorry. 19 bundles contained 465 (13830 yards) of polyester 80 per cent cotton 20 per cent shirting of Japanese make and 5 bundles contained 164 rolls (4100 yards) of printed nylon crape saree cloth of Japanese make. There was no document to show the illicit nature of the import or acquisition of the foreign fabrics and the motor cycle. The Police party therefore seized the articles, along with the lorry, under a mahazar and registered. Crime No. 212 of Kasaragod Police Station. On 7th October 1972 the articles, with a copy of the first information report, and search list, were delivered over to the Superintendent of Central Excise, Customs Preventive Unit, Kasaragod for necessary action. The Inspector of Central Excise, Special Customs Preventive, Kasaragod, seized the articles under a mahazar prepared on 7th October 1972. On the reasonable belief that the fabrics in the 24 bundles and the Motor Cycle and lorry were liable to confiscation under the Customs Act, 1962 (for short the Act) the Superintendent of Central Excise, Special Customs Preventive Unit, Kasaragod took up investigation of the case. The investigation revealed that the fabrics and motor cycle and the lorry belonged to the first accused, Kallatra Mohim and the absconding accused, C. K. Hussain, and other accused were assisting him in acquiring, keeping, concealing, transporting, carrying, etc., of" the contraband fabrics and motor cycle, knowing that they were smuggled goods.

3. The accused were questioned and their statements were recorded as provided in the Act. The lorry originally belonged to P.W. 5, Damodara Prabhu of the United Stores, Mangalore. It was revealed that the lorry was purchased in 1968 by one Abbas, examined as P.W. 6 in the case, at the instance of the first accused, Kallatra Mohim. The first accused paid the purchase money, and at his instance a document of sale was executed by P.W. 6 in favour of the fifth accused, K. Mohammed Kunhi. The premises of M/s Kallatra Mohim and Company at Chembur Road, Mangalore and the office premises of P.W. 5, Damodara Prabhu, were searched and certain documents were seized, which threw light regarding the connection which the first accused and C. K. Hussain had with the lorry. Efforts were made to get at Shri P. Moideen, S/o P. M. Mohamed, the registered owner of the motor cycle seized, but the summons issued to him was returned stating that there was no such person. The market value of the goods seized on the date of the complaint was Rs. 2,33,460. The fabrics made wholly or mainly of synthetic yarn are goods notified u/s 11B of the Act, and falling u/s 123, and the burden of proving that they are not smuggled goods is on the accused person from whose possession they were seized.

4. The Additional Collector of Customs, after notice to the accused, by his order dated 4th June 1974 confiscated the 24 bundles of foreign fabrics and the motor cycle and imposed penalties on all the accused. It was in addition to the above

proceedings that the prosecution was launched u/s 135(1) of the Act.

5. The accused denied their guilt. The complainant examined 13 witnesses. P.W. 1 is the Joint Superintendent of Police who registered Crime No. 213 of 1972. P.W. 2 is the Village Officer, who was present at the time of the seizure of the lorry. He turned hostile and stated that he did not know whether the accused were in the lorry at the time when it was intercepted. P.W. 3, Koshy, is the Assistant Secretary of the Kerala State Transport Authority. He was examined to prove the permit issued to Damodara Prabhu as the owner of the lorry and that it was subsequently extended in the name of K. Mohamed Kunhi, the fifth accused. P.W. 4, Kunhiraman, was another person who was present at the time the lorry was intercepted, P.W. 5 and P.W. 6 are respectively Damodara Prabhu and Abbas, in whose name the lorry stood prior to its purchase in the name of Mohamed Kunhi. P.W. 7, Gopala Rao, is the Inspector of Central Excise and he was examined to prove the search conducted in the premises of Kallatra Mohim and Company. P.W. 8, Mohammed Sali is the son-in-law of the first accused. He was examined to prove the search conducted in Kallatra Mohim and Company. P. Ws. 4, 6 and 8 also turned hostile. P. Ws. 9 and 10 speak to the search conducted in the house of the first accused and the seizure of certain documents. P.W. 11, Krishnan, is the Deputy Chief Chemist to the Government of India attached to the Central Excise Laboratory at Bombay. It was he who examined the contents of the sample sent from the Customs House, Cochin, and issued the certificate. P.W. 12, Anantha Naik, is the Manager of the United Stores Mangalore, owned by P.W. 5, Damodara Prabhu. He was examined to speak to the dealings between him and the first accused and P.W. 6. P. W. 13 is the Assistant Collector of Customs and Central Excise, the complainant in the case.

6. The first accused in his statement u/s 313 of the Code of Criminal Procedure denied that he was present at the time of the seizure of the articles and his connection with the goods seized. He admitted that he gave a statement, Ext. P-31, to P.W. 10. But, according to him, he was forced to sign the document and it was not his voluntary statement. Accused 2 and 3 denied that they were in the lorry. The second accused also denied that he had any connection with the occurrence. The third accused claimed that the motorcycle belonged to him. According to him, he was traveling in the motor cycle at about 10 00 p.m. on 18th September 1972 from Kasaragod to Uduma. At Chattanchal the Joint Superintendent of Police and party stopped the motor cycle and prevented him from going forward. The motor cycle was taken to custody and he was arrested. He filed a complaint before the Sub Divisional Magistrate; but later on he withdrew the complaint on directions issued by the Government of Kerala. He produced certificate of registration, insurance and other records of the motor cycle. According to him, though the vehicle- belonged to him he could not get the registration transferred. He claimed for a return of the motor cycle. The fourth accused, when questioned on 16th July 1976 admitted that he was in the lorry and that he was asked to get down, but denied that the lorry was covered with tarpaulin and that there was a motorcycle "YAMAHA" in it. He denied knowledge

of the presence of other foreign textiles in the lorry. But, when questioned after the evidence was closed, he denied that he was in the lorry or that he admitted his presence on the previous occasion. According to him, he had gone to Ghattanchal in bus from Kasaragod and was walking along the road. It was then that he was taken into custody. The fifth accused, Mohammed Kunhi stated, that the lorry belonged to him. Being a public carrier he used to entrust the vehicle with the driver. The driver would contact him once in a week or after 15 days. He had no information about the occurrence and was not a party thereto. All the accused admitted that they gave statements before the Customs authorities. But, according to them, they were forced to give such statements. It was due to coercion that they were forced to give such statements.

7. The Judicial Magistrate of the First Class, Kasaragod, held that the printing on the shirting viz., "POLYSTER BLENDID LADN OMILON S.E. 3150 POLESTER FYDER 80 PER CENT COMPED COTTON 20 PER CENT MERCERIZED FAST COLOUR LIGHT RESIN DELUXE SILKY FINISH MADE IN JAPAN", and on the sarees viz., "OMIKENSHI SPINNING Co., Ltd. MADE IN JAPAN", could not be taken as proof of the fact of the foreign origin of the goods. Reliance was placed on the decision in Assistant Collector Customs and Another Vs. Mukbujusein Ibrahim Pirjada, that the markings and labels would be hearsay evidence and as such should be excluded from consideration. The Court also held that the evidence of P.W. 11 Chemical Examiner could not be acted upon.-In the first place the witness does not say that the goods, were of foreign origin. The examination was done as per Ext. P-46, requisition from the Superintendent of Customs, Sri P. C. K. Nair. The sample was sent through Sri T. Haridas, Inspector of Central Excise, Special Customs Preventive Unit, Talicut. The seizure of the goods was on 19th September 1972 and the Customs Department got the goods on 9th October 1972 Only one metre of the fabrics was sent to the Chemical Examiner and that too as late as 22nd July 1975. Neither P.C.K. Nair who sent the requisition nor Haridas who delivered the sample has been examined to speak to the effect that the sample sent was from put of the goods deposited. The Chemical Examiner does not say that the goods were of foreign origin. He only stated that the sample was mainly composed of synthetic yarn. The Court therefore held that no inference could be drawn that the goods seized were of foreign origin. The Court further held that Section 123 of the Customs Act, which cast the burden of proof on the person from whom the articles were seized that they are not smuggled goods is not applicable in the instant case in as much as the goods were seized not by an official of the Customs Department but by the Joint Superintendent of Police. The burden is on the complainant to prove that the goods are contraband articles liable to be seized for non-payment of the duty. In coming to the above conclusion the Court placed reliance on the decision in Assistant Collector Customs and Another Vs. Mukbujusein Ibrahim Pirjada, . The Court also held that there is no reliable evidence to show that the first accused was in the lorry MYD 2606 when it was intercepted. According to the learned Magistrate, there would be hardly place for five persons to sit in the cabin of the lorry. The Court held

that accused 2 to 4 were in the lorry. Regarding the ownership of the goods, it was held that there are no sufficient materials in the case to show that they belonged to the first accused. Though there were circumstances to show that the lorry belonged to the fifth accused it has not been made out that the fifth accused had knowledge of the contents of the lorry. The statements of accused 2 and 4 were not acted upon on the ground that they were not statements given voluntarily. The Court, for the above reasons, acquitted the accused. The order of acquittal is challenged in this appeal.

8. One of the main points arising for decision is whether Section 123 of the Act regarding the burden of proof is applicable to the instant case. Section 123 reads:

Where any goods to which this Section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This Section shall apply to gold, diamonds, manufactures of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the official Gazette specify.

From the language of the Section itself it is clear that the seizure of the goods should be under the Act. Evidently in the present case, the seizure was not by an officer of the Customs Department but by the Joint Superintendent of Police. The contention however is that police officers are also persons authorised to do functions under the Act by virtue of the notification issued u/s 6 of the Act. Section 6 of the Act deals with entrustment of functions of Board and Customs Officers or certain other officers, and it states, that the Central Government may, by notification in the official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any of the functions of the Board or any officer of Customs under the Act. Under the notification, dated 17th June 1966, the Central Government entrusted to the Police Officers of the State of Kerala specified in the schedule attached thereto the functions of the officer of Customs under Sections 100, 101, 102, 104, 106 and 110 of the Act, within the limits of their respective jurisdictions, excluding the customs area therein. Among the officers so entrusted are Sub Divisional Officers of the Police, Tellicherry and Kasaragod, Inspectors of Police, Tellicherry, Cannanore, Thaliparamba, Hosdrug and Kasaragode and other subordinate officers. There is no material in the case to show that the Joint Superintendent of Police comes under the above categories

of officers. v. Even assuming that he is one of the persons included in the notification, the notification specifically excludes the customs area, if any, within their respective jurisdiction.. No material has been produced to show the place of seizure in the instant case is included in the notification. In other words, there is no indication to show whether the place is outside the customs area. In the absence of such material it cannot be inferred that P.W. 1, Joint Superintendent of Police, seized the articles as empowered under the Act. On the other hand, the evidence of P.W. 1, the Joint Superintendent of Police, himself is to the effect that he acted in exercise of the powers vested in him under the general law in his capacity as a Police Officer. P.W.1 maintained in his evidence that he was competent to investigate the case under the Customs Act, independently of the Customs Department. He would however say that before banding over the articles and the charge of the case to the Customs Department he filed a final report in Court on 7th October 1972. In the light of the above circumstances it is difficult to hold that P.W. 1 acted under any authority conferred on him u/s 6 of the Customs Act.

9. The further question is whether the rule of burden of proof u/s 123 would be available in a case where the goods seized by an officer, not authorised under the Act, are delivered over to the Customs authorities and the investigation continued by the said authorities under the Customs Act. A similar question arose before the Supreme Court under the Sea Customs Act of 1878; in the case *Gian Chand v. State of Punjab*. Section 178A of the Sea Customs Act is worded on similar lines as Section 123 of the Customs Act. In the case referred to, the City Inspector of Police, Jullundur, having received information that smugglers were on the point of transporting gold from Amritsar to Jullundur, organised a raid-party and seized gold and other articles. The Inspector thereafter made a report to the Court that no case had been made out against the persons. The case was therefore dropped. In the meanwhile the Assistant Collector of Customs made an application to Court for the delivery of the gold bars to the Customs authorities u/s 180 of the Sea Customs Act and proceeded with the case. The question arose later on, whether under such circumstances the rule regarding burden of proof was available in the case. The Supreme Court held, that-

A "seizure" under the authority of law does involve a deprivation of possession and not merely of custody and so when the police officer seized the goods, the accused lost possession which vested in the police. When that possession is transferred, by virtue of the provisions contained in Section 180 to the Customs authorities, there is no fresh seizure under the Customs Act. It would, therefore, follow that, having regard to the circumstances in which the gold came into the possession of the Customs authorities, the terms of Section 178A which requires a seizure under the Act were not satisfied and consequently that provision cannot be availed of to throw the burden of proving that the gold was not smuggled, on the accused.

The above decision has been followed in *Shah Guman Mal Vs. State of Andhra*

Pradesh, a case directly arising u/s 123 of the Customs Act. To the same effect is the decision in Assistant Collector Customs and Another Vs. Mukbujusein Ibrahim Pirjada,

It follows that Section 123 of the Act relating to burden of proof is not applicable in the instant case.

10. Even if the presumption u/s 123 is not available and there is no direct evidence in the case to prove that the articles are smuggled, the Court is competent to rely on circumstances and hold that the goods seized are smuggled goods. If any authority is needed the same is provided in the decision of the Supreme Court in Issardas Daulat Ram and Others Vs. The Union of India (UOI) and Others, . There was no direct evidence to show that goods were smuggled. The Supreme Court took into account the conduct of the person to whom the gold belonged, the credibility of the story about the purchase of the goods, the price at which the gold was stated to have been purchased, the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added to it and held that those were relevant pieces of evidence on the question regarding the character of the gold whether it was licit or illicit. In Labhchand Dhanpat Singh Jain Vs. The State of Maharashtra, the Supreme Court approved the above decision and held that the clandestine manner in which the accused was trying to enter the Railway Compartment, his nervousness on being questioned, incredible story that he put forward and the statement given by him before the Customs officials could be taken into account for holding whether the gold seized were liable to confiscation u/s 111 of the Customs Act.

11. This will lead to the further question as to whether in the instant case there are sufficient materials for holding that the textile goods seized were of foreign origin. The complainant placed reliance on the fact that there were foreign markings on the goods and that that would conclusively establish that the goods were of foreign origin. The Court placed reliance on Assistant Collector Customs and Another Vs. Mukbujusein Ibrahim Pirjada, , and did not accept the contention. The above case, already referred to while dealing with Section 123 of the Customs Act, arose in connection with the seizure of certain gold bars with foreign markings. The Court after referring to the decision of the Privy Council in Comptroller of Customs v. Western Electric Co. Ltd. 1966 A.C. 367 held that the markings should be excluded from consideration as being no more than hearsay.

12. In my view, so far as India is concerned, admissibility of evidence including hearsay evidence is governed by the Indian Evidence Act. When the issue is whether a particular piece of article is of foreign origin, the existence of marks thereon showing that it was made in a foreign country is a relevant fact. May be the probative value thereof will depend upon other circumstances including the authenticity of the markings. If a representative of the foreign manufacturer comes forward as a witness and withstands cross-examination that will be sufficient to prove the foreign origin. If on the other hand the person who manufactured the article could not be found or his presence could not be

procured without an amount of delay or expense, which under the circumstances of the case, appears to the Court to be unreasonable and if it appears to the Court that the markings were made in the ordinary course of business, they are admissible u/s 32 of the Evidence Act, though they may not be conclusive in proving the foreign origin. If the opposite party challenges the genuineness of the markings, the weight to be attached to the presence of the markings will depend on other factors as well. In such cases the Court may cast the burden of proof on the person from whose custody the article with foreign markings were seized to prove that the markings are spurious because as the person in possession of the article he is presumed to know its source or origin. At any rate, where direct evidence regarding the manufacture of the article is wanting and the issue has to be decided with reference to the attendant circumstances the condition of the article at the time of seizure and its appearance including markings thereon are factors which can be taken into account in deciding whether it is of foreign origin.

13. In the instant case, Ext. P-1 and the evidence of P-1 show, that besides mentioning the quality of the goods, the markings include the words SHIKISHIHA SPINNING GO. LTD., MADE IN JAPAN, in one case and OMIKEN-SHI SPINNING CO. LTD., MADE IN JAPAN in another. The markings on the fabrics, its appearance and quality, the way in which the goods were packed and kept in the lorry with ice slabs over the tarpaulin, suggestive of an attempt at concealment of the goods, the fact two persons presumably the owner of the goods and the driver of the lorry took to their heels on the lorry being intercepted by the police, the absence of a case for those who were taken into custody that the goods were of Indian origin are sufficient indications that the goods are smuggled goods of foreign origin.

14. That there were, during the relevant time, restrictions on the import of fabrics, sarees and knitted ware made wholly or mainly of synthetic yarn is clear from the notification dated 3rd January 1969, under the notified Goods (Prevention of Illegal Imports) Rules, 1969. P.W. 11, who was the Chemical Examiner attached to the Customs House, Cochin, has given evidence that he received a sealed packet on 24th July 1975 containing sample fabrics presumably taken "on 21st July 1975 from one out of 24 bundles of fabrics deposited under No. 43/72/73, dated 9th October 1972 as O.K. No. 17/72 Customs House, Cochin". On examining the contents physically and chemically P.W. 11 found that it was mainly composed of synthetic yarn. It has come out that the sample was taken by Sri P.C.K. Nair, Superintendent and was carried to the Chemical Examiner by Sri T. Haridas, another officer.

Neither of these persons has been examined. There is, therefore, no direct evidence connecting the sample with the articles seized from the lorry, M.Y.D. 2606 on 19th February 1972, except the writing on the sample M.O. 4. The trial Court for justifiable reasons refused to act upon the certificate, Ext. P-45, in the absence of the link evidence, for holding that Ext. P-45 related to the goods

stated to have been seized from the accused.

15. The prosecution case is that the lorry, M.Y.D. 2606, was sold to P.W. 6, Abbas by P.W. 5, Damodara Prabhu and P.W. 6 sold it to the fifth accused, the transaction being benami for the first accused. Reliance was placed by the prosecution on Exts. P-5 to P-17 document seized during the search of the office of P.W. 5 at Mangalore. According to P.W. 5, though the lorry was sold to P.W. 6 Abbas in September 1968, the registration and route permits were not transferred then since the full consideration had not been paid by P.W. 6. Ext. P-6 is a copy of a receipt stated to have been issued by P.W. 12, Manager of the United Stores, on behalf of P.W. 5 for Rs. 1,848 15 towards the balance sale price of the lorry. In Ext. P-6 it is written that the amount was received through the first Defendant Kallatra Mahin. Ext. P-7 to Ext. P-17 are other documents relating to the lorry in respect of the transactions after the lorry was transferred to the fifth accused Mohammedkunhi. P.W. 6 denied having received the original of Ext. P-6. Reliance was also placed on Exts. P-27 to Exts. P-39 seized from the residence of the first accused to show that even though the lorry stood in the name of the 5th accused it really belonged to the first accused. I don't propose to deal with these documents in detail since they are not sufficient to lead to any definite conclusion. Suffice to say that there are strong indications suggesting that the lorry could have been purchased for and on behalf of the first accused.

16. The complaint against the accused is that they were in possession of 24 bundles of synthetic fabrics of Japanese origin, which they had reason to believe, were liable for confiscation u/s 111 of the Customs Act, and as such, they committed an offence falling u/s 135(1)(b) of the Act. P.Ws. 1, 2 and 4 are the witnesses who were examined to prove the facts alleged. P.W. 1 is the Joint Superintendent of Police, Kasaragod, who intercepted the vehicle on its way. He would say that accused 1 to 4 were in the lorry along with the absconding accused, Hussain. All of them were in the cabin of the lorry. After the vehicle was intercepted and while the witness and his party were examining the goods loaded in the vehicle the first accused and the driver of the vehicle, Hussain, took to their heels. Although the police party attempted to catch hold of them they did not succeed. The first accused, however, denied that he was in the lorry or that he had anything to do with the carrying of the fabrics. The presence of the first accused is sought to be proved by the evidence of P. Ws. 1, 2 and 4. Though P.W. 1 would speak in his chief-examination that accused 1 to 4 were present in the lorry he admitted in cross-examination that they were not persons whom he knew previously. Evidently, P.W. 1 had only a fleeting glance so far as the accused who left the place were concerned, and, therefore, it is not safe to act upon his uncorroborated testimony.

17. P.Ws. 2 and 4, the hostile witnesses, do not help the complainant in proving the presence of the first accused in the lorry. P.W. 2 would say that when the lorry was stopped those who were in the lorry as also the pedestrians who were on the spot ran away and the police caught hold of three of the persons who ran

away. The witness does not say that the first accused was in the lorry. So far as P.W. 4 is concerned, he was not in a position to say whether any of the accused was in the lorry. Therefore, the oral evidence in the case is insufficient for a finding that the first accused was in the lorry. Apart from the oral evidence, reliance is placed on Ext. P-31 and Ext. P-32 statements of the first accused recorded by the Customs Officers. These statements also do not contain an admission to the effect that the first accused was in the lorry. Therefore, there are no sufficient materials to differ from the conclusions arrived at by the trial Court, that the first accused has not been proved to have been present in the lorry when it was seized with the contraband articles.

18. So far as the second accused is concerned, he was the cleaner of the lorry. Apart from the evidence of P.W. 1, the testimony of P. W. 2 would also support the case of the complainant that he was present in the lorry. But, even assuming that he was present there is no material which will go to show that he had either custody or possession of the article. The complainant also has no case that the articles were under his control. The mere presence in the lorry by itself may not be sufficient for holding that the second accused had either possession of the articles or that he was carrying the articles or that he knew that they were smuggled goods. Therefore, the case of the second accused does not satisfy the conditions required u/s 135(1A).

19. So far as the third accused is concerned, his case is that he was travelling in a motor cycle and that he was not in the cabin of the lorry. The complainant has no case that the articles belonged to the third accused. On the other hand, the definite case put forward is that they belonged to the first accused and the first accused was present in the lorry. Under such circumstances, even assuming that the third accused was in the lorry at the time when it was seized it cannot be said that he was in possession of the articles or that it was he who was carrying the goods, or that he knew that they were smuggled goods.

20. As regards the fourth accused, the evidence is that he was a cooly. There is no case that he had anything to do with the articles seized. His presence in the lorry is not sufficient for presuming that he was in possession of the articles found in the lorry or that he was carrying the same, or that he knew that they were smuggled goods. Therefore, the acquittal of accused 2, 3 and 4, does not call for interference.

21. There remains only the case of the fifth accused. The fifth accused admitted in his statement that the lorry belonged to him. But, according to him, it used to be hired to different persons as a public carrier. The driver would contact him only once in a week or after 15 days. He had no information about the occurrence, and, as such, he was not liable. According to the complainant, the fifth accused was the owner of the lorry only nominally and the vehicle really belonged to the first accused. There is no evidence to show that the fifth accused had anything to do with the goods that were found in the lorry or that he was in possession thereof, or that he was carrying the goods. Therefore, there are no

sufficient materials for interference with the findings of the trial Court.

For the above reasons the order of acquittal passed by the Magistrate is confirmed and the Appeal is dismissed.