
(1965) 05 CAL CK 0031
In the Calcutta High Court

Kishanlal Agarwalla

APPELLANT

Vs

Collector of Land Customs

RESPONDENT

Date of Decision : 21-05-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) CriLJ 174 : (1966) 2 ILR (Cal) 24

Hon'ble Judges : S.A. Masud, J;P.B. Mukharji, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment and order of Binayak Nath Banerjee, J. dismissing the appellant's petition under Article 226 of the Constitution and discharging the Rule against the Collector of Land Customs, Calcutta.

2. The appellant is Kishanlal Agarwalla carrying on business under the name and style of "Shree Katihar Jewellery" at Katihar in the district of Purnea. A servant and an employee of the appellant by the name of" Dharam Chand Jain was going from Katihar to Calcutta. He was following a rather devious route, it being from Katihar by train to Raiganj, thereafter, by bus to Kaliaganj and then be intended to proceed by bus to Balur ghat from where he wanted to travel by air to Calcutta. This was the appellant's case. On the journey at Kaliaganj this Dharam "Chand Jain was caught red handed carrying 41 gold bars bearing No. 999.10 and weighing 412 tolas 1 anna and 4 ratis, on the strength of an information, received by the Land Customs Authorities from a source. Dharam Chand Jain carried this large number of gold bars round his waist tied in dhoti. Four hundred and twelve tolas was a heavy weight. Apart "from this large amount of gold and the large number of bars and their being all carried round the waist, an unusual place, there were other remarkable features attending this seizure of gold. This gold was packed with or wrapped up with printed census papers of East Pakistan. The fineness of the gold "999.10" suggests that, this gold was imported foreign gold because normally this fineness is not achieved in India. The seizure was made at Kaliaganj during the transshipment or change that the said Dharam

Chand Jain was making in the journey. The seizure was actually made on the 13th November, 1956 between the hours 15.55 and 20.30 hours. The whole of the gold was recovered from the person of Dharam Chand Jain and from his waist, and was worth about Rs. 50,000.

(2-A) The defence of the appellant was that. the gold was not smuggled or imported foreign gold, that this gold bar was made out from old ornaments purchased from Jewellers and thereafter melted at the shop of the appellant in the moulds of the appellant. An other part of the defence of the appellant is that the gold seized was later on substituted by a different gold by the Custom Authorities. A further defence of the appellant is that his servant Dharam Chand Jain was going to the firm of M/s. Ramdhondas Bhagwandas at No. 56, Netaji Subhas Road, Calcutta with this gold.

3. There was an investigation followed by the adjudication of the Collector of Land Customs. On the 14th November, 1956. the appellant's mould or forma in which the gold was supposed to have melted and moulded was handed over to the Authorities. It is needless to say that after seizure of the gold a search list was prepared, the gold bars were weighed and sealed with the seal of the District Enforcement Branch Officer in the presence of Dharam Chand Jain and two witnesses, on the 13th November, 1950. The gold was then deposited in sealed packet in the Raigani Sub-Treasury with seals intact, on the 16th November, 1956. Thereafter, on or about the 14th May 1957, the Superintendent of Land Customs, Raiganj Circle took over the gold bars from the Sub-Inspector, District Enforcement Branch Police, Kaliaganj, Raiganj Sub-Treasury. The appellant's books of account were requisitioned as well as the cash memo books on or about the 25th June, 1957. The gold bars were brought down to Calcutta on or about the 8th September, 1957,

4. Thereafter, on the 25th September, 1957 the appellant received the show cause notice or memo dated the 5th September, 1957 from the Superintendent, Land Customs, Raiganj Circle, Malda. Further investigation followed. The samples were tested and assayed by the Mint Authorities of the Government of India. Finally the present show cause notice was given on or about the 1st October, 1958 on which the adjudication took place. This show cause notice recites first that there is reason to believe that the gold bars had been smuggled from Pakistan into India without permit as required u/s 5 of the Land Customs Act and without a valid permit granted by the Reserve Bank of India as required u/s 8(1) of the Foreign Exchange Regulations Act, 1947. It gave notice that, therefore, the gold was liable to confiscation and that the appellant was liable to penalty under Sections 5(3) and 7(1) of the Land Customs Act, 1924; and Section 167 (8) read with Section 19 of the Sea Customs Act, 1878, along with Section 23-A of Foreign Exchange Regulation and Section 9 of the Land Customs Act, 1924.

5. This show cause notice gave a fair account of the evidence on which the charge was based slating, namely, (1) that the seizure was made on the basis of a source information lodged with the seizing police officer, a copy of which was

enclosed; (2) the search list was prepared by the seizing police officer showing the recovery of the gold bars from the person of Dharara Chand Jain wrapped up with printed census papers of East Pakistan and the copy of the search list was also enclosed; (3) Dharam Chand Jain's statement that he was proceeding from Katihar to Calcutta, but on search of his person it was found that Dharam Chand Jain had no money with him for meeting the expenses of air journey to Calcutta; (4) the appellant's case that the gold was obtained by the appellant after melting and moulding old ornaments purchased by the appellant in the ordinary course of business was not supported by any reliable evidence and as long as six months after the date of seizure, the appellant submitted certain books of accounts and purchase memos which on investigation showed that none of the alleged sellers of broken ornaments could produce the original purchase receipts; (5) that although the appellant said that he could not produce the relevant account books, purchase memos etc. before 25-6-1957 on the ground that they were sent to Calcutta to M/s. Ramdiondas Bhagwau das on 11-11-56 by messenger; Mr G N. Shroff, partner of M/s. Ramdhondas Bhagwan das stated that the account books sent to them were returned within 8 to 10 days of their receipt and such account books were brought only for verification of certain amounts of money lent and that neither G.N. Shroff nor any of the partners of his firm had ever dealt in gold; (7) that the Assay Reports of the Government of India Mint, New Alipore, show that the fineness of the gold seized and the copies of Expert opinion of the Mint Authorities and the Bullion Merchants Association, which were also sent to the appellant indicated that the gold was imported.

6. The appellant showed cause on or about the 13th October, 1958 as well as Dharatn Chand Jain who was also served with the notice to show cause. There was attempt to postpone the hearing of the adjudication, On the 18th November, 1958 when the hearing was fixed the appellant raised the contention that unless the breaking of the seal on the gold was first decided it was not possible to submit complete answer. On the 18th November, 1958 however, the adjudication of the Collector proceeded with the enquiry and the evidence of Dharam Chand Jain and R.M. Das was recorded. The appellant with the advocate was present. In fact, the appellant's lawyer cross-examined R.M. Das and a point has been raised that some of the questions in cross-examination were not allowed.

7. The appellant was informed by a letter enclosing copies of the evidence taken on the 18th November, 1958 as well as the statement of the jewellers from whom the appellant is supposed to have procured the broken ornaments which he alleged to have melted and made into gold bars. The appellant through his lawyer went on writing long legalistic letters. Finally, on the 3rd December, 1958 at the hearing the appellant attended with the lawyer ready to non-co-operate with the adjudication because it was found that the "lawyer had already come armed with a typed letter which he gave as his reason for withdrawing from the hearing on the ground that "natural justice and reasonable facilities to defend" have been denied to the appellant. The order recorded on that date, the 3rd December, 1958 showed that the appellant came ready and prepared to take

that step.

8. The Collector had no other option but to carry on as best as he could. On the 17th December, 1958 he enclosed a statement from Mohendra Narayan Ghosh and asked for further submission of the appellant in respect of that evidence. This Mohendra Narayan Ghosh was the printer of the receipt form of the appellant which he was supposed to have given to the jewellers from whom he got the broken ornaments for melting. On the 7th January, 1959 the appellant submitted his explanation and comment on the statement of Mohendra Narayan Ghosh. Then on the 19th January, 1959 the Collector of Land Customs offered inspection of the account books of the appellant as well as the records of the "Yogo-maya Press" and asked for further submission of the appellant on that point. Thereafter, on the 30th January, 1959 the appellant through his lawyer wrote to the Collector stating that he had no jurisdiction to determine the liability until and unless it was proved that the samples drawn by the Superintendent were from the seized gold.

9. Finally, the Collector made the following order of adjudication on the 9th April, 1959; after a careful survey of the facts:

I order that the 41 pieces of gold weighing 412 tolas 2 annas 11 pies (as found on weighment in the fine balance in the Custom House Laboratory), seized from Sri Dharam Chand Jain at Kaliagunj on 13-11-1956 shall be confiscated u/s 5(3) of the Land Customs Act and Clause (8) of Section 167 of the Sea Customs Act. This confiscation is made absolute by virtue of Section 23-A of Foreign Exchange Regulation Act.

" I also impose a penalty of Rs. 1,000 (Rupees One thousand only) on Shri Dharamchand Jain, son of late Shri Ashkasan Jain u/s and (C)(Sic) Land Customs Act.

(Sd.) K. Narasimhan, Collector of Land Customs. Calcutta."

The appellant moved this Court and obtained ex parte the rule on the 14th July, 1959 under Article 226 of the Constitution. That rule was discharged by Banerjee, J. on the 16th August 1961, against which this appeal has been preferred,

10. The main points argued by Mr. Bhabra, the learned Counsel for the appellant, are three. In the first place, he contends that Section 178-A of the Sea Customs Act was wrongly applied by the learned Judge to the facts of the present case. In the second place, he contends that, the point of substitution of the gold has not been properly approached and decided by the Customs authorities. His third contention is that there has been violation of the principles of natural justice.

11. The first point u/s 178-A of the Sea Customs Act may be decided at the outset. That section reads as follows:

(1) 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 on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The point taken by Mr. Bhabra is that before the burden of proof is shifted on the accused the essential condition is that the goods must be seized "under this Act" which means under the Sea Customs Act. He contends that these goods were not seized under the Sea Customs Act but under the Criminal Procedure Code. In support of his contention he draws attention to the heading of the statement of Dharam Chand Jain taken on the day of the seizure i.e., 13-11-1956. Apparently, that heading was on a printed form and the heading is as follows:

Copy of the statement of Shri Dharam Chand Jain s/o Late Asharam Jain of Raiganj recorded u/s 161, Cr. P. C., in connection with seizure of 412 tolas one anna 4 ratis of sold on 13-11-56 u/s 550 Cr. P. C.

On that slender basis of the heading recorded in Dharam Chand Jain's statement Mr. Bhabra has built up his argument, that the gold in this case was not seized under the Sea Customs Act, and therefore, the onus u/s 178-A of the Sea Customs Act, should not have been shifted by the learned Judge to the appellant.

12. The apparent glamour of this point as a piece of technicality sheds much of its lustre by reason of the fact that the adjudication of the Collector of Customs which the appellant is challenging in this proceeding did not at all apply Section 178-A of the Sea Customs Act. What the Collector of Customs rightly did was to say this:

In some of the replies received from the parties to the show cause memo and also in the course of the hearing reference has been made to Section 178-A of the Sea Customs Act. I must make it clear that in this case the "burden of proof" has not been cast on either of the parties. The proceedings are u/s 5 of the Land Customs Act read with the relevant provisions of the Sea Customs Act and Foreign Exchange Regulation Act which have been referred to in the show cause memos issued.

Therefore, the point really cannot help Mr. Bhabra ultimately but, naturally he has to urge that point because the learned Judge Banerjee J. appears to have applied Section 178-A of the Sea Customs Act to the facts of the present case. For he held "The burden of proof being on the petitioner, it was for him to disprove the charge." It is therefore, necessary for us to consider the point.

13. No doubt, before the burden of proof is shifted to the alleged smuggler u/s 178-A of the Sea Customs Act the goods seized must be goods seized under that Act. Section 9 of the Land Customs Act provides for the application of the Sea Customs Act and in the Schedule of the Land Customs Act i are given the

sections of Sea Customs Act which are made applicable for the purpose of levy of duties on Land Customs. That schedule includes Sections 178-A as well as 178 of the Sea Customs Act, among other sections. Therefore, "goods seized under this Act" in Section 178-A of the Sea Customs Act would also include goods seized under the Land Customs Act by reason of Section 9 thereof. The question then is that if the gold seized is under the Criminal Procedure Code could it be said to be also the gold seized under the Land Customs Act so as to attract provision for the burden of proof in Section 178-A of the Sea Customs Act?

14. We do not consider that in the facts of this case the statement of Dharam Chand Jain recorded u/s 161, Cr. P. C. and u/s 550, Cr. P. C. read with Section 56, Cr. P. C. means that the goods were not seized under this Act within the meaning of Section 178-A of the Sea Customs Act read with Section 9 of the Land Customs Act. The reasons may be briefly summarised. In the first place, Section 161, Cr. P. C. is a provision for the examination of the witnesses by this police. All that it does is that any police officer making an investigation under Chapter XIV of the Criminal Procedure Code dealing with information to the police may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such person is bound to answer all questions relating to such case put to him by such officer, except of course the questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. This is purely a provision of making a record of statement of a person. Section 56 of the Cr. P. C. similarly deals with the procedure when the police officer deposes a subordinate to arrest without warrant. It is the power to arrest without warrant that is provided there. Then Section 550, Cr. P. C. deals with the powers to police to seize property suspected to be stolen. It provides that any police officer may 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". Neither Section 161, Cr. P. C., nor Section 56, Cr. P. C. nor Section 550, Cr. P. C. proves the basic assumption of Mr. Bhabra that the proceedings were not under the Sea Customs Act read with the Land Customs Act but were different proceedings in the Criminal Procedure Code. Section 550, Cr. P. C. makes it clear in express language that the police officer may seize any property which may be found under circumstances which create suspicion of the commission of any offence. "Any offence" does not mean an offence only contemplated by the Indian Penal Code or under the Criminal Procedure Code. Therefore, the fact that Dharam Chand Jain's statement was recorded under Section 161, Cr. P. C. form does not prove that this was not a proceeding under the Land Customs Act read with the Sea Customs Act.

15. It is essential in this connection to bear in mind the provisions of Section 5(2) of the Criminal Procedure Code which in effect provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the Indian Penal Code and the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or

place of investigating, inquiring into, trying or otherwise dealing with such offences. That shows that trial of offences against other laws is aided by the Criminal Procedure Code only up to a certain point and the special laws like the Sea Customs Act and the Land Customs Act would apply in regulating the manner or place of investigation, enquiry or trial or otherwise dealing with such offences. Therefore, reference to Sections 161, 56 and 550 of the Code of Criminal Procedure in the form of recording the statement of Dharam Chand Jain does not take the offence out of the Sea Customs Act read with the Land Customs Act. In this connection it is appropriate also to bear in mind the provisions of Section 3 of the Land Customs Act saying that the Central Government may, by notification in the Official Gazettee, appoint, for any area adjoining a foreign frontier and specified in the notification, a person to be the Collector of Land Customs and such other persons as it thinks fit to be Land Customs Officers. Such notification is already there and has been shown to us, where police officers have been appointed as Land Customs Officers for the frontier areas. Indeed the clearest possible reference in express language is made to this Notification in the show cause memo dated the 1st October, 1958 in these terms:

...were recovered on search of the person of your employee Shri Dharam Chand Jain, son of late Askaran Jain at Kaliaganj, District West Dinajpore on 13-11-56 by the Sub Inspector of Police, District Enforcement Branch, Kaliaganj under the powers vested in him as Land Customs Officer by virtue of the notification No 190-Cum dated 10-12-55 issued by the Ministry of Finance, Revenue Division, Government of India.

Therefore, that police officer who was seizing the goods and using the thana form was not acting under the Indian Penal Code so much or under the Criminal Procedure Code, but in his capacity as Land Customs Officer u/s 3 of the Land Customs Act read with the Notification. Reference may in this connection be made to the decision of the Supreme Court in *Hukma Vs. State of Rajasthan*, .

16. Mr. Bhabra, learned Counsel for the appellant relied on the Supreme Court decision in *Gian Chand and Others Vs. The State Of Punjab*, . In that decision the Supreme Court discussed this question and drew the distinction between seizure under the Act and a seizure under provisions of other law's. There the goods were delivered to the Customs authorities by the Magistrate u/s 180, and therefore, were held to have been taken from the persons accused in a criminal case so as not to throw the burden of proof on them u/s 178-A of the Sea Customs Act. Hence it was held in that case that the possession obtained by the Customs Department by goods being "conveyed to and deposited at the nearest Custom House" were not goods which were seized under the Sea Customs Act. This ease cannot help the appellant in the present facts. In that case before the Supreme Court the goods were seized by the City Inspector of Police and an actual complaint was filed charging the three accused of the offences under Sections 411 and 414 of the Indian Penal Code before the Magistrate. What

happened thereafter was that this charge of receiving stolen property preferred against the three accused was, however, not proceeded with and as the police Inspector made a report that no case had been made out against them, the case was dropped. Meanwhile the Assistant Collector of Customs contacted the City Police and made an application to the Court of the First Class Magistrate, Jullundur for the delivery of these gold-bars to the Customs authorities obviously u/s 180 of the Sea Customs Act.

17. Here the facts are entirely different. There was no proceeding either under the Criminal Procedure Code and/or under the Indian Penal Code in this case. From the beginning it was a case under the Sea Customs Act read with the Land Customs Act. A chalan for case records was sent to the Land Customs Superintendent, Raiganj Circle. The detention receipt No. 41/CI/Imp. dated 14th May 1957 and issued on 14-6-57 was issued from the Collectorate of Central Excise and Land Customs, Calcutta. No Magistrate ever took charge of this case under the Criminal Procedure or under the Indian Penal Code. Finally both the first and the second show cause notice, one dated the 5th September, 1957, and the other dated the 1st October, 1958 were all issued from the Collectorate of Land Customs quoting the Land Customs Act, the Sea Customs Act and the Foreign Exchange Regulations Act. Therefore, in that context of facts it is clear and plain and indisputable! that the goods were seized under the Sea Customs Act read with Land Customs Act and, therefore, they were goods "seized under the Act" within the meaning of Section 178-A1 of the Act.

18. The next submission for the appellant concerns the theory of substitution of the gold. The appellant's case before the Collector of Land Customs was that the seized gold might have been substituted at some period between 13-11-56 and 18-7-58 when ten samples were drawn for testing. We have carefully analysed the records and the decision of the Collector of Land Customs. We are satisfied that there is no substance whatever in this charge of substitution. It was really an after thought of the appellant. The facts are that all these 41 pieces of gold bars were seized on 13-11-56 from the possession and person of Dharam Chand Jain. After seizure a seizure list was prepared and the police officer sealed the gold on that very day. Subsequently, an escort was arranged by him and on 16-11-56 with the seals intact the entire gold was deposited into the Raiganj Sub-Treasury. It shows that between the date of recovery and deposit to the Sub treasury, that is between 13-11-56 and 15-11-65 there was no room for substitution. The next period is from 16-11-56 to the date of taking over gold by Sri Das when it was lying with the Sub treasury at Raiganj with the police seals intact. On that date, the 14th May, 1956, at the time of taking over the gold, it was weighed again. After taking over the gold Sri R.M. Das had on the very spot resealed the gold and placed it in the custody of the Sub-treasury. The gold remained there until it was formally taken over by his successor, Sri A.K. Basu who took the gold from the Sub-treasury to the Custom House Strong Room from where it was produced before the Collector of Customs in connection with the adjudication proceedings. It is difficult to imagine at what stage the substitution

could possibly have taken place. There was no allegation against any departmental officer and there is no proof that there was any departmental officer who harboured any grudge or grievance against the appellant so that he will be guided by any malicious motive to put the appellant into trouble. What is worse, such a substitution would be senseless because no departmental officer could have gained by such a substitution. The allegation of the appellant is that he had the "Tojabi Gold" of lower fineness. Why should gold of lower fineness be substituted by gold of higher fineness and naturally costing more?

19. The outstanding feature of this point is that neither the lawyer for the appellant nor the appellant himself ever thought of this plea of substitution until the 21st July, 1958, although the fact remains that over a period of a year and a half they had been addressing several communications to the the Superintendent of Land Customs and the Collector of Customs about the seizure of 41 pieces of gold bars. Secondly, the significant aspect of this point is that on the 18th July, 1958, when the appellant's lawyer who had also executed a vakalatnama on 14-5-58 for Dharam Chand Jain along with the appellant appeared before the Superintendent of Intelligence - Preventive Unit for drawing 10 sample pieces for being assayed, at that time neither of them denied that the gold bars produced before them were not the same ones seized at Kaliaganj. On the contrary they accepted the ten pieces as representative samples drawn from the 41 pieces seized from Dharam Chand Jain. Both of them appeared before the Bullion Registrar to witness the drawing of samples from the ten pieces and also signed the inventory list then prepared. A copy of this inventory list was also taken by the lawyer for the appellant and attested by him and they show their admission without protest that the samples were drawn from the "seized" gold. For the first time doubt was raised about the identity of the gold pieces only on the 21st July, 1958. in a letter addressed to the Collector of Land Customs by the appellant. The Collector of Customs was right in holding from the records that that letter misstated the facts for the records clearly show that the identity of the gold must have been finally accepted by the appellant or else there was no reason why the appellant or his lawyer should have proceeded with the selection of ten samples, witnessed the drawing of samples from these pieces by the Bullion Registrar and also attested the inventory that was later prepared and of which a copy was taken by the lawyer himself. What is most curious is that even in that letter dated 21st July, 1958, there was no definite or firm denial, of the identity of the gold pieces. The appellant only wanted an enquiry to be made as to when and why the seal of the bag containing the gold was broken in his absence in the absence of his employee Dharam Chand Jain.

20. Here a word must be said about the seals. It appears that immediately after the seizure, the gold pieces were wrapped up and sealed by the police officer with his own seal for the purpose of depositing the valuables in the Sub-treasury at Raiganj. That was only to ensure that while in police custody the gold was kept in safety and not stolen, tampered with or interfered with. Dharam Chand Jain or the appellant never put their own seals on this gold. Had they done so

there might have been some force in this argument that as the seals had been broken, therefore, the gold must have been substituted. There was no statutory obligation to call witnesses, the appellant and his servant at every stage when the seized valuables were being removed from the Sub-treasury till they were finally brought to the Control Godown in Calcutta pending the final adjudication of the case.

21. But the most compelling circumstance disproving substitution is that the number of gold pieces, the description, particulars, their marks "999.10" are all in agreement with the particulars given in the very Seizure List prepared on 13-11 56. To us it seems incredible that there could be any substitution in the facts of this case. Dharam Chand Jain him self gave evidence in this case and he could not deny that it was not his gold or his employer's gold. He tried to give a noncommittal answer by saving that he was not sure, but that would not be enough when everything including the mark, description, and other particulars and weight tallied. Tins Court has no hesitation in holding that the defence of substitution is without any merit.

22. To us it seems that this alleged plea of substitution is a dangerous plea for the appellant. If the goods are not of the appellant then of course he cannot complain that these goods which are not his should not be confiscated. He has no right to this gold and, therefore, he has no right to complain about its confiscation. No doubt, he can complain as he has complained that the Collector of Land Customs has found the goods to be in fact belonging to the appellant. But even then that will afford no relief to the appellant because even if the gold was held not to be his. he cannot get out of the order of confiscation on the ground that, there is nobody to complain about such confiscation. Even if he could succeed on the issue of fact about substitution then all that could have happened was that the Government will be liable to make good the loss caused to the appellant for converting his gold but that is not the relief that can be canvassed under Article 226 of the Constitution or which is even sought in this writ. What is worse, such a relief by way of damages for substitution or conversion of the appellant's goods certainly has become time barred under limitation.

23. In any event, we are however, satisfied on the facts that there has been no substitution at all.

24. Finally, Mr. Bhabra for the appellant contends that the adjudication in this case has violated the principles of natural justice. The way he formulates his charge of violation of natural justice may be set out briefly. In the first place, he argues that Abalakanla Bhattacharjee, Sub-Inspector, District Enforcement Branch was not produced for cross-examination because he was the person who should have been called as he seized the gold and then lodged it at the Raigunj Sub-treasury. It is also his complaint that the police officer who brought the gold from Raigunj to Calcutta has also not been produced for cross-examination. Then, the complaint is that Mr. P.N. Sen, Superintendent of Land Customs.

Prosecution and Intelligence Branch, who was the person before whom samples were to be taken and when seals were found to be broken had not been called. The further, complaint is Mr. N.N. Roy Chowdhury, Superintendent, Seizure and Disposal Branch Customs House, had not been called to show under what seal and label he had received the gold and when the seal was broken and the gold actually weighed. Lastly, it is stated that Mohendra Narayan Ghosh, the owner of the "Yogamaya Press" was not produced for cross-examination,

25. Now except so far as Mohendra Narayan Ghosh is concerned of the "Yogamaya Press", the complaint about the non-production of the other persons for cross-examination bears only on the plea of substitution of the gold. As already pointed out by us the facts are so eloquent and the circumstances so overwhelming on this point of identifying the seized gold, with number, weight and other descriptive details specially the mark "999-10" that there appears no substance in this point at all. Oral evidence on this point would be immaterial when on the appellant's own oral evidence through his servant Dharam Chand Jain could not deny affirmatively the identity of the gold.

26. We shall now deal separately about Mohendra Narayan Ghosh. The complaint is that he was not produced for cross examination. On the facts which we are about to state presently there is no substance in this complaint and there is no violation of the principle of natural justice, The relevant facts on this point, are summarised as follows:

Twelve purchase receipt books were submitted by the appellant on 25-6-1957 to the Superintendent, Land Customs. Raigunj. The first of these receipts was issued on 28-7-1956 and the last one was issued on 8-4 1957. Investigations revealed that these purchase receipts were printed at Yogamaya Press. Katihar, on an order received from Katihar from the appellant on 14.8.1956 and their delivery was taken sometime between 17-8-56 and 22. 8.1956 This was a statement of Mohendra Narayan Ghosh, proprietor of the "Yogmaya Press". Katihar. The whole of this statement was sent to the appellant for comments by the Collector of Land Customs by his letter dated the 17/18th December, 1958. It was seen from the first book of the 12 purchase receipt books submitted by the appellant that, as many as 65 receipt books were issued from that book during the period from 28 7 1956 to 16-8-1956 to different persons as jewellers in token of purchase of gold and silver, whereas from the statement of Mohendra Narayan Ghosh these purchase receipts were not even printed till 17-8-1956. That threw great doubt on the genuineness of these purchase receipts. But then there was no violation of any principle of natural justice because the Collector of Land Customs sent the statement of Mohendra Narayan Ghosh to the appellant with his forwarding letter of the 17/18th December, 1958 addressed to the appellant stating "Your further submission, if any, in respect of the above evidence, may be made to the undersigned within a fortnight of the date hereof, failing which the case will be decided on the evidence on record without any further reference to you." So, here the appellant had the full statement of

Mohendra Narayan Ghosh, the proprietor of the "Yogmaya Press" which incidentally was not an evidence on oath. Here also complete and full opportunity was given to the appellant to comment on this "evidence ". The fantastic comment made on this "evidence" by the appellant was that Mohendra Narayan Ghosh was not a sufficiently literate person and that the appellant had commenced his business on 28-7-1956 and within a few days he had received the printed receipt books from the press and as the appellant could not get the printed vouchers to be sent to the sellers he noted their names and addresses and told them that the appellant would get their signature in confirmation of the sales as soon as the printed receipts were available. Therefore, the appellant's comment was that the printed receipt was received from the press and he subsequently obtained the signature of these persons as they were men of Katihar and Purnia towns. Naturally, the Collector of Land Customs has wholly disbelieved this evidence as incredible. If the appellant's case was that he had purchased these ornaments, gold and silver from jewellers, then he must have given them receipts as and when he purchased them. There would be no point in giving them subsequent receipts. Nobody will be willing to part with gold without some kind of receipt or money for the same.

27. Calling of Mohendra Narayan Ghosh therefore, cannot form a part of a plea of violation of natural justice. Mohendra Narayan Ghosh made a statement to the Land Customs. That statement was sent to the appellant for comment. The appellant did make the comment. That means that he had full opportunity to see the "evidence" and to make his comments.

28. There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard. This latter doctrine is known as *audi alteram partem*. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of *audi alteram partem*, that no party should be condemned unheard. No natural justice requires that there should be a kind of a formal cross-examination. Formal cross-examination is procedural justice. It is governed by rules of evidence, it is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him, the demands and the test of natural justice are satisfied. Cross-examination in

that sense is not the technical cross-examination in a Court of law in the witness-box.

29. The judicial climate on this point is thickly clouded with many decisions. The result is that the danger of confusion has become real and natural justice is on the misleading road of sentimental potentialities. Many long arguments and citations were made to us from the Bar. We shall notice only a few out of deference to these arguments.

30. Mr. Bhabra contends that formal cross-examination is a part of natural justice, to support of that proposition he relies first in the case of Union of India (UOI) Vs. T.R. Varma, . To begin with that case was a case of a departmental enquiry on the question of wrongful dismissal. There is express provision in Rule 55 of the Fundamental Rules giving the aggrieved party the light to cross examine. For instance Rule 55 inter alia says "At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses.... " The passage on which Mr. Bhabra for the appellant relied was the observation of Venkatarama Aiver. J. at page 117 (of SCA): (at p. 885 of AIR) where it was said:

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

Reference was there made also to the Supreme Court decision in New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., . The other case on which Mr. Bhabra relied was State of Mysore Vs. S.S. Makapur, . Again to begin with this was a departmental enquiry and related to the rules of service. In the appeal there also the same learned Judge at p. 378 quoted with approval his Lordship's own observation in the previous case. Finally there is also the decision of the Supreme Court. Phulbari Tea Estate Vs. Its Workmen, where at page 1113 the same observations were, quoted. This of course was a case under the Industrial Disputes Act.

31. These principles have been further discussed by the Supreme Court in State of Madhya Pradesh v. Chintaman Sadashiva, reported in AIR 1901 SC 1623 which again was also a case of disciplinary proceedings in respect of the dismissal of a public servant. It repealed the principles laid down in Union of India (UOI) Vs. T.R. Varma, . But then although that case related to disciplinary proceedings in respect of the public servant the observations of Venkatarama Aiyar, J. at page 377 make it quite clear what the position is in the following terms:

For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

This gives the counter-foil to Mr. Bhabra's argument when he tried to rely on the observations in *Union of India (UOI) Vs. T.R. Varma*, . quoted above which incidentally has also been quoted by Venkatarama Aiyar, J., in *State of Mysore Vs. S.S. Makapur*, . In the passage of the learned Judge which is quoted above the answer to Mr. Bhabra's argument is given. That answer is that the only obligation which the law casts on the tribunal on this point is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. This has been amply done in the present case. Mohendra Narayan Ghosh's statement was sent to the appellant. The test of cross-examination, not understood in the technical sense of cross examination in Courts but understood in the sense of criticising the evidence used against is satisfied.

32. In conclusion all that we need to say is that natural justice must not be strained to become artificial justice. Procedural justice according to statutes or under statutory rules are different from the concepts of natural justice. There the procedure, under the statute or the Rules must govern. If the Collector of Land Customs were to convert himself to a regular Court of law hearing formal cross-examination and applying the Evidence Act and the Civil and Criminal Procedure Codes in this manner as a Court of law then of course it will be physically and literally impossible for him to function as the Collector of Customs,

33. Mr. Bhabra for the appellant also made a point with regard to the evidence of R.M. Das. His complaint was that some of the questions had been disallowed in cross examination. We have carefully gone through the short evidence of R. M Das and cross-examination at pages 84 to 90 of the Paper Book. We have seen the questions disallowed. As they are not numbered we cannot mention the numbers. But each question disallowed is supported by reason for such disallowance. We are in complete agreement with the Collector of Customs and we think he was right in disallowing such questions.

34. Mr. Bhabra also made a minor point for the production of case diaries in the cha-Ian printed at page 91 of the paper book. We do not think that was ever

denied to the appellant on the records and in any event no reliance was placed on such case diary and therefore, there can be no question of violation of natural justice.

35. In conclusion this Court will make it clear that even if Section 178-A of the Sea Customs Act did not apply to this case we would still hold on the whole evidence on record that the appeal must fail. The circumstances against the appellant are eloquent These circumstances are:

(1) Forty one bars of gold, a large quantity, weighing more than five seers and of the value of more than Rs. 50 000;

(2) they were in bars with special mark as "999" which are not to be obtained in India according to the expert opinion;

(3) that they were found in the waist of (the person Dharam Chand Jain wrapped in Pakistan census papers;

(4) that Dharam Chand Jain was taking a devious route from Katihar to Raiganj, from Raiganj to Kaliaganj, from Kaliaganj to Balurghat and from Balurghat to Calcutta and yet he had not the money for the air ticket. With all that gold he was travelling by bus and train and in a manner not consistent with a bona fide traveller carrying legitimate gold. The Government's comment is that he was touching the various points on the frontier with a view to make contacts for disposing of such gold, or else there was no point in pursuing such a preposterous route;

(5) the actual case made by the appellant completely proves the case of the Government. The whole story that the appellant was sending the gold to the firm M/s. Ramdhondas Bhagwandas at No. 56, Netaji Subhas Road Calcutta, has been completely falsified. The evidence of Gajendra Saraf shows that they never carry on business in gold and their business was in jute, textiles, Kerana (spices). Dharam Chand Jain's statement and evidence that he was carrying this gold to this Calcutta firm falls to the ground. The story that the books of account could not be produced by the appellant because they were sent to this firm Ramdhondas Bhagwandas is also belied by the evidence of Gajendra Saraf, a partner of the firm who said that the verification of their accounts was made with the accounts of the firm, but that was only for a period of 8 or 10 days, but not for seven months. The appellant's case, therefore, that the books of account were there in Ramdhondas Bhagwandas firm from 11-11-56 to 25-6-57 is falsified;

(6) the next part of the appellant's case is that he manufactured these gold bars from his own moulds. The moulds that were produced from his shop show that these moulds had different sizes and they do not agree with the moulds of the gold bars seized. In fact the grooves length of the mould indicate a size of 7.2 inches whereas the gold bars seized are of much smaller length 2.7 inches. The ends of the bars are also well rounded showing that they had not been cut or

shaped after being cast in bar shapes in the mould of proper size. The grooves of the mould are also of lesser thickness than that of the gold bars. Not one of the so-called jewellers could produce a single receipt to prove the appellant's version that he bought the gold from them; nor did these jewellers produce the books of account of their own to support the appellant's case. The books of account of the appellant do not show any entry to prove that the appellant sent Dharam Chand Jain on 13-11-56 with that huge quantity of gold to Calcutta.

36. So even if Section 178-A of the Sea Customs Act about the burden of proof is not applied to this case, the facts as on records leave no room for doubt that this order of confiscation must be maintained.

37. For these reasons the appeal is dismissed with costs, the hearing fee being assessed at five gold mohurs, and the order of the Collector of Customs is upheld.

38. Let the ad interim order restraining the opposite party from disposing of the gold bars continue for one month from date.

S.A. Masud, J.

39. I agree.