

(1976) 07 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 683 of 1976

P. C. ABRAHAM

APPELLANT

Vs

ADDITIONAL COLLECTOR OF CUSTOMS, CUSTOMS HOUSE,
WILLINGDON ISLAND, COCHIN - 3.

RESPONDENT

Date of Decision : 07-07-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 132
Constitution of India, 1950 — Article 226, 227, 309, 311
Customs Act, 1962 — Section 107, 108, 115, 122, 124
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 193, 220

Citation : (1976) 5 CTR 293B

Hon'ble Judges : T. Kochu Thommen, J

Bench : Division Bench

Judgement

T. Kochu Thommen, J. - The question for consideration is whether the expression "a reasonable opportunity of being heard" in clause (c) of section 124 of the Customs Act, 1962, includes a right to cross-examine persons who have not been summoned by the department as its witnesses, but whose statements are relied on by it in an enquiry against the petitioner. It is contended that such a right is derived from the principles of natural justice as embodied in the section.

2. The facts of this case are : The petitioner is the owner of car K.L.F. 4024. It is one of the several cars alleged to have been involved in smuggling activities on 14-11-1973. The car was seized by the Customs Officer on 15-11-1973. A notice was sent to the petitioner, together with copies of statements of certain persons, including that of the driver of his car, calling upon him to show cause as to why his car should not be confiscated u/s 115 of the Customs Act, 1962. To this notice the petitioner sent Ext. P1 reply stating that he had no knowledge whatsoever of the alleged offence, that he had instructed his driver not to use the car for any unlawful purpose, that the trip sheet showed that the car had on 14-11-1973 gone to Irinjalakuda and returned to Cochin and again to Trichur and

returned to Cochin at about 1 p.m. on the same day (both places being away from Kodungallur from where the smuggled goods are alleged to have been carried), and that his car was therefore not liable to be confiscated under sec. 115. On 20-8-1974 the petitioner was asked to furnish the names of witnesses he wished to examine at the time of personal hearing. Ext. P7 dated 6th September 1975 is the reply sent by the petitioners advocate stating that Sri P. C. Abraham (Petitioner himself) and Sri M. Abdul Kader were the two persons the petitioner wished to examine. Ext. P3 is a letter informing the petitioners advocate that the hearing would take place on 1-10-1974 and asking him to be present with the 3 witnesses. Apparently the hearing did not take place on that day. Ext. P4 dated 30-9-1974 is a letter sent by the petitioners advocate stating :-

"Before the examination of defence witnesses it is highly necessary to afford an opportunity to cross-examine the witness of the Department. My client has not admitted the statements alleged to have been made by different persons before the Department authorities regarding the alleged incident.

Therefore, I, on behalf of my client, pray that an opportunity may be given to my client for cross-examination of Departmental witnesses."

Ext. P5 memo dated September 1975 was sent to the petitioner with copy to his advocate in which the respondent stated :-

"With reference to the relies of the undermentioned persons to the show cause notices of even number dated 21-3-1974m, they are informed that they may appear before the Additional Collector of Customs, Custom House Cochin-3 for personal hearing at 11 a.m. on 30-9-1975.

"If this opportunity is not availed of for personal hearing the case will be decided on the basis of evidence on records without any further reference to them."

Neither the petitioner nor his advocate was present at the time appointed for personal hearing i.e. 11 a.m. on 30-9-1975. The advocate however appeared before the respondent in the afternoon. In paragraph 48 Ext. P6 order the respondent states as follows regarding what took place when the advocate appeared before the respondent in the afternoon :-

"Advocate Shri Sivasankaran who represented Shri P. C. Abraham and K. R. Dominic appeared before me on the afternoon on 30-9-1975 in respect of the case which was heard in the morning. While explaining the circumstances under which he could not come at the appointed time, he specifically wanted to be recorded that the reliance on the statement without the witness being specifically produced by the department should not be accepted. On this premise, he added, there is no case against his clients and the consequential relief should be afforded."

Sri. K. N. Sivasankaran, petitioners advocate who appeared before the respondent, has filed in this court his affidavit dated 13th June 1976 stating :-

"As the respondents notice evidenced by Ext. P5 served on my clients did not intimate that any of the persons who had given statements against my clients will be available for cross-examination at the personal hearing fixed on 30th September, 1975, I bona fide thought that there was no necessity for examining any witness on behalf of my clients and that the matter had only be argued. On account of personal inconvenience to appear before the respondent at 11 a.m. on 30-9-1975 as required in Ext. P5 and as there were several parties to be heard in the matter I requested the respondent over the phone to take up the personal hearing in respect of my clients only in the afternoon and to give me time till then. The respondent acceded to mu request If only the respondent had intimated me or my clients that the persons whose statements had been recorded behind the back of my clients would be produced for examination or tendered for cross-examination and fixed a time for that I would have certainly appeared promptly at the time fixed by the respondent for that purpose".

3. Ext. P6 order whereby the petitioners car has been confiscated is impugned for the reason that the respondent did not give the petitioner a proper opportunity to show why his car was not liable to be confiscated. It is contended that the petitioner should have been given due opportunity to cross-examine the persons whose statements were relied on by the officer to the detriment of the petitioner, and that the failure on the part of the respondent to produce these persons for cross-examination has resulted in violation of the principles of natural justice. It us submitted that the petitioner or his counsel of both of them would have been present at the appointed time if only he had been informed that these witnesses would be available for cross-examination. The affidavit of the petitioners advocate also speaks to that effect. IT is not admitted by the respondent that the petitioners advocate had asked for an adjournment of the case from the forenoon to the afternoon. It is not clear from the records whether any such adjournment was asked for or given. Be that as it may, the fact is that when the advocate did appear before the respondent, as stated earlier, all that he had to say was that his client had no case to answer as the department had not examined its witnesses at the enquiry. In the course of the argument, counsel for the petitioner Sri. V. Rama ShenoI submitted that the only evidence that was available to the department was the statements of one Mohammed Jafer and the petitioners driver, A. S. Ahamed, both of whom were charged for the offence of transportation of smuggled goods. It is therefore contended that their evidence was tainted and no reliance should have been placed upon them. It is further contended that the petitioners statement in Ext. P1 reply to the show cause notice that this car had gone to Irinjalakuda and returned to Cochin and that it had again gone to Trichur and returned to Cochin on the very same day, as indicated in the trip sheet, was that the car had been used for the transportation of smuggled goods between Kodungalloor and Cochin and therefore the petitioners contention that the car had not gone to Kodungalloor, as indicated by the trip sheet, ought to have been duly considered by the department before passing Ext. P6 order. It may be mentioned at this stage that

neither the petitioner nor his counsel raised any such contention before the respondent. For, neither of them was present at the time of the hearing in the morning, and when the advocate appeared in the afternoon before the officer he did not raise this point. It may also be stated at this stage that this point had not been pressed in appeal for no appeal was filed by the petitioner, although the statute provides for a right of appeal and then revision.

4. I shall now refer to the relevant sections of the Act. Section 115(2) says :-

"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the Owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules :-

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

x

x

x"

Sub-section (2) of the section 115 thus makes it clear that unless the owner is in a position to show that the unlawful employment of the car was without the knowledge or connivance of himself or his agent or his driver and that each of them had taken all necessary precautions against such use, the vehicle is liable to be confiscated. Section 107 gives sufficient power to the officers to conduct an investigation before holding an enquiry as contemplated under the Act. Section 107 says :-

"Any officer of customs empowered in this behalf by general or special order of the Collector or Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

(a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine any person acquainted with the facts and circumstances of the case."

Section 108 provides :-

"(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in

connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required :-

"Provided that the exemption u/s 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 220 of the Indian Penal Code."

These two sections when read together show that examination of persons u/s 107(b) is not a formal enquiry but only an investigation to facilitate an enquiry. (See *Balkrishna Chhaganlal Soni Vs. State of West Bengal*, , para 15. The statements mentioned in the show cause notice were statements taken from persons who had been examined for the purpose of investigation u/s 107. These persons were not summoned u/s 108 and examined formally as witnesses, although their statements were relied upon by the officer for coming to a decision.

5. Section 122 refers to adjudication of confiscation. It says :-

"In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -

(a) without limit, by a Collector of Customs or a Deputy Collector of Customs;

x

x

x

6. Section 124 embodies the principles of natural justice relating to audi alteram partem. The section reads as follows :-

"No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person :-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within which reasonable time as may be specified in the notice against the grounds of

confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :-

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

The owner of the vehicle has to be given notice of the grounds on which his property is proposed to be confiscated. He has to be given an opportunity for making a written representation against the proposed confiscation, and further he has to be given a reasonable opportunity of being heard in the matter. He is thus given a full opportunity for controverting the charging against him and for stating his case. The section contemplates not only a written representation, but also an oral hearing. But the point at issue is whether such hearing representation, but also an oral hearing. But the point at issue is whether such hearing necessarily examination and cross-examination of witnesses.

7. An administrator like the Collector of Customs is invested with large powers for the due performance of his duties some of which relate to the subject-matter of quasi-judicial power is quite thin and is being gradually obliterated." A. K. Kraipak vs. Union of India 1970 ITR 150. It is therefore necessary that he acts fairly and justly. When he performs duties which are purely administrative, he is untrammelled by the requirements of natural justice; but his duties often overlap quasi-judicial duties the performance of which effects the civil rights of persons against whom decisions are taken. In such cases he must act in accordance with the principles of natural justice which require that the party affected must be given a fair opportunity of being heard.

8. As early as 1885 Lord Selborne stated as follows in Spackman vs. Plumstead Board of Works (1885 X Appeal Cases 229) :-

"No doubt in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He (the administrator) is not a Judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the dictation of some other persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice. See also Cooper vs. Wandsworth Board of Works 1863 14 CB (NS) 180."

This principle was restated and affirmed a few years later by Lord Loreburn in Board of Education vs. Rice (1911 A.C. 179 at 182). His Lordship observed. -

"In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as

though it were a trial."

9. The twin aspects of natural justice, namely *audi alteram partem* ("hear both sides") and *name judex in cause sue posest* ("no one can be a judge in his own cause") ensure that no person shall be condemned without giving him an effective opportunity of being heard by a tribunal that is free from bias. In other words, he should not only have an opportunity to meet the charges against him and state his own case, but the tribunal hearing him must also act in good faith. A reasonable or fair opportunity of being heard in essence means an opportunity of being heard by unbiased tribunal. This in short is the quintessence of the rules of natural justice. These principles apply not only to courts, but in substance to administrative tribunals as well for any person or body of justice. See the judgment of Lord Haldane L.C., in *Local Government Board vs. Arlidge* 1915 AC 120;

10. An administrator performing judicial or quasi-judicial function is not a court, and therefore his proceedings are not governed by the procedure generally followed in courts. He is the master of his proceedings, and so long as he conducts them fairly and justly, they cannot be challenged. He must hear both sides, *Rex vs. Cambridge University* (Dr. Dentlys case 1723 I STR 557; whether or not he hears them orally. *Local Government Board vs. Arlidge* (1915 A.C. 120, 134), *Cooper vs. Board of Works for the Wandsworth District* 1863 (14) CB (NS) 180, *Errington & Other vs. Minister of Health* 1935 (1) KB 249. An opportunity of being heard does not necessarily mean an oral hearing. *Local Government Board vs. Arlidge* 1915 AC 120, *Cooper vs. Board of Works for the Wandsworth district* 1863 (14) CB (NS) 180, *Errington & Others vs. Minister of Health* 1935 (1) K.B 249. Unless the statute says so, an oral hearing may be in many cases impracticable. If however one person is heard orally, the other person also has right to be heard orally. If witnesses are examined on behalf of one side, the other side also would be given the same opportunity : furthermore they should have an opportunity to cross-examine the witnesses on the opposite side. If a statute provides for a particular means of hearing, the administrator must employ those means. If he is left without express guidance, he must still act honestly and by honest means. When statutes specifically provide for an opportunity of being heard they generally imply an oral hearing. When expressions such as "hearing" or "opportunity to be heard" are used in legislation, they usually denote a hearing at which oral submissions and evidence to be tendered. See S. A. de Smith *Judicial Review of Administrative Action*, Third Edition, page 177. As already stated, each person must have a reasonable opportunity of knowing the charges against him, of controverting those charges and of leading his own evidence. This is especially so where grave charges are brought against a person who may be visited with serious consequences by the decision of the Administrator. As stated by Lord Atkin in *General Medical Council vs. Spackman* 1943 AC 627 :

"..... I cannot think that the procedure which may be very just in deciding

whether to close a school or an insanitary house is necessarily right in deciding a charger on infamous conduct against a professional man."

11. The procedure of a tribunal is generally much less formal than that of a court. In *T. A. Miller Ltd. vs. Minister of Housing and local Government and another* (1968 (1) W.L.R. 992) Lord Denning M.R. observes :-

"Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it."

12. Principles of natural justice are not embodied rules. Their aim

"..... is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it."

(*A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . Principles of natural justice cannot be applied uniformly. They vary from case to case depending upon the facts of each case and the constitution of each tribunal. As stated by Tucker, L.J., in *Russell vs. Duke of Norfolk and others* (1949 (1) All England Reports 109, 118). See also *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, ; *State of Mysore Vs. S.S. Makapur*, ; *State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad*, para 20); and *Wiseman and another vs. Borneman and others* (1971 Appeal Cases 297).

"The requirements of natural justice must depend on the circumstances of the case, the nature of inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

13. The question therefore is whether clause (c) of section 124 which provides for a reasonable opportunity of being heard includes an opportunity to cross-examine persons upon whose statements reliance is placed by the department but who has not been summoned as its witness.

14. The Supreme Court had occasion to consider this aspect in connection with proceedings under the Sea Customs Act, 1878, *Sikri, C.J.*, as he then was, speaking for the court in *Kanungo and Company Vs. Collector of Customs and Others*, stated as follows :-

"We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs

Authorities have relied was set out and it was then for the appellant to give suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant." See also *Kishanlal Agarwalla Vs. Collector of Land Customs*, , paras 24 to 32); AIR 1968 Cal. 174; *Haripada Moitra Vs. President, Calcutta Improvement Tribunal*, .

15. Counsel for the petitioner submits that the principle stated by the Supreme Court in regard to cross examination in proceedings under the Sea Customs Act, 1878, does not necessarily apply to proceedings under the Customs Act, 1962, for, according to him, the earlier Act did not contain any provision analogous to Sec. 124 of the new Act. He contends that the petitioners case which is governed by the provisions of the new Act cannot be decided on the basis of the above mentioned observation of the Supreme Court.

16. Petitioners counsel Shir Rama Shenoi, with usual thoroughness and learning, referred me to a large number of authorities in support of his contention that cross-examination is an essential requirement of an opportunity of being heard, but none of them directly answers the point at issue. He drew my attention to the following statement of Professor Wade :-

"The right to call and to cross-examine witnesses is therefore, as a general rule, part of the procedure required by natural justice." (Administrative Law, 2nd Edition, page 194).

The learned author says that there is a right to cross-examine witnesses, but he does not say that, if witnesses were not summoned by the officer, a person in the position of the petitioner would necessarily have a right to have them summoned and cross-examined. The authorities referred to by the learned author in support of his proposition are : *Osgood vs. Nelson* 1872 LR 5 HL 636 and *Ceylon University vs. Fernando* 1960 (1) WLR 223 In *Osgood vs. Nelson* witnesses were in fact examined and cross-examined. In *Fernandos* case the question was only posed, but decided. Counsel referred me to 76 L.Q.R. 178-179 for a criticism by Prof. A. L. Goodhart regarding the reluctance of English Courts to recognise the right of cross-examination in administrative proceedings. The learned author refers to *Byrne vs. Kinematograph Renters Society Ltd.* 1958 (1) WLR 762 where it is stated that the requirements of natural justice in proceedings before a domestic tribunal are fully satisfied : (a) if a person was informed of the accusation made against him; (b) if he had an opportunity to state his case; and (c) if the tribunal acted bona fide. Commenting on this decision, Prof. Goodhart says :-

"..... it must be noted that these three requirements are limited to a case of

this kind. It may, therefore, be true, as the judgment in the present case suggests, that in other cases the requirements of natural justice might also include an opportunity to confront and question a particular witness. It would be unfortunate if it were thought that natural justice never required such confrontation."

Here one finds an echo of what Lord Atkin stated in *General Medical Council vs. Spakman* 1943 AC 627 as regards the procedure relating to the closure of a school and that which concerns grave charges of misconduct and the like. Prof. Goodhart further says :-

"This point has been discussed at length by the United States Supreme Court in a number of recent case."

Referring to American Jurisprudence, dependent on the constitution and the Act of 1964, J. F. Garner speaks of the more precise development of the principle of *audi alteram partem* in the United States of America. *Administrative Law*, 4th Edn. P. 120. He refers to *Philadelphia Co. vs. Securities and Exchange Commission*, 1948 175 Fed 808 at P. 817) where the U.S. Supreme Court observes :-

"Adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the Constitution."

In the United States the requirements of *audi alteram partem* are embodied in Section 7(c) of the Administrative Procedure Act, 1946 in the following words :

"Every party shall have the right to present his case or defence by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination may be required for a full and true disclosure of the facts."

Counsel for the petitioner referred me to a more recent decision of the United States Supreme Court in *William L. Greene vs. Neil M. McElory* (360 US 474, 3 L 2d 1377 at 1397). The Court States :

"We decided only that in the absence of explicit authorization from either the President or Congress the respondents was not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."

These decisions of the United States Supreme Court are not of much help as they are rendered on the basis of special enactments and the Fifth and Fourteenth amendments to the Constitution relating to due process.

17. Counsel for the petitioner referred me to the decision of our Supreme Court in *Phulbari Tea Estate vs. Its Workmen* AIR 1959 SC 1111 *Meenglas Tea Estate*

vs. Its Workmen 1963 (2) LLJ 392 ; Union of India (UOI) Vs. T.R. Varma, ; decisions, the Supreme Court has emphasised the importance of cross-examination in judicial or quasi-judicial enquires. These cases relate to either industrial disputes or disciplinary proceedings against government servants. In matters of domestic enquiries orders which provide for examination and cross-examination or witnesses. Apart from such standing orders, the object of an enquiry relating to industrial dispute is to promote industrial peace and social justice, and the principles applicable to such proceedings need not necessarily apply to administrative proceedings generally. As regards disciplinary action against government servants, the proceedings are not only regulated by the provisions of Article 311 of the Constitution, but also by the rules made under Article 309 and other statutory rules. These rules generally provide for examination and cross-examination. Apart from the fact that industrial disputes and disciplinary action against government servants stand on a different footing, in one of the decisions cited at the bar has it been stated that cross-examination is an essential requirement of natural justice even when no witness has been examined. In all those case witnesses had been examined and naturally therefore the opposite party had a right to cross-examine them.

18. Petitioners counsel then referred me to the decisions of this Court in K. T. Shaduli vs. State of Kerala 1971 KLT 630; Kunhiraman Nambier vs. R.T.A. 1965 KLT 59; and Mahin vs. The Collector of Customs & Central Excise 1966 KLJ 1117. These decisions have discussed what is a fair opportunity in the context of the relevant fact and the statutory provisions applicable to such facts. Rule of audi alteram partem are not neatly cut and dried or nicely weighed and measured. What is a fair opportunity must of necessity depend upon the facts and circumstances of each case, the constitution of each tribunal and the provisions of law applicable to it. The requirements of the natural justice thus vary from case to case and they are not rigid or fixed rules. None of these decisions therefore can be of direct help in answering what is a reasonable opportunity in terms of Sec. 124(c) with regard to the facts and circumstances of the present case.

19. The burden of proof in proceedings before the Customs authorities is discussed in Collector of Customs, Madras and Others Vs. D. Bhoormall, :

"Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person and in the result prove him guilty". See also Amba Lal vs. Union of India AIR 1961 SC 264.

If the officer has come to a decision on the basis of materials having sufficient probative value, in the sense that the decision has the necessary logical proximity with the materials available, the decision cannot be challenged. As stated by Diplock L.J. in *Reg. vs. Deputy Industrial Injuries Comm., Ex parte Moors* 1965 (2) WLR 89 :

"It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above".

20. In the present case the Collector relied upon the statement of certain persons one of whom was the driver of the petitioners car. All these persons had been charged with the offence of transporting smuggled goods. Copies of these statements had been given to the petitioner. The petitioner had a proper opportunity to answer them. He was given a further opportunity for oral hearing. The petitioner was never denied an opportunity to lead his own evidence, nor was he in fact refused a chance to cross-examine persons who had given statements against him, if he was so inclined. It would appear from Ext. P6 that an opportunity for cross-examination was extended to other persons who appeared at the enquiry. It is likely that the petitioner would also have been given such opportunity, if only he had appeared and asked for it. He who chose to remain absent, cannot be heard to complain that he was not given a due opportunity of being heard. This is especially so as the petitioner had been informed by Ext. P5 Memo that if he was absent from the hearing, the case would be decided "on the basis of evidence available on records without any further reference to him" In any case when the petitioners advocate appeared in the afternoon, all that he had to submit was that his client was not bound by the proceedings against him. It is therefore not clear from the records that the petitioner was ever denied an opportunity to cross-examine. The petitioners attitude of indifference to the proceedings is clear from the fact that he himself was not present, despite the inability of his advocate to be present. Whatever be the reasons that kept the petitioner and his counsel away from the enquiry, the petitioner could have, if he so desired, challenged the order of the Collector in appeal where he could have, if he so desired, challenged the order of the Collector in appeal where he could have pressed the many points argued before me on the nature of the evidence relied on by the department and the inadequacy of such evidence. But he did not file any appeal. These questions cannot now be examined in the present proceedings. It cannot be stated that there was no evidence for the Collector to form his conclusions. He had before him the statement of certain persons and other facts collected by his officers. In the absence of any effective answer by the petitioner, the Collector was justified in forming his conclusions on the basis of the available evidence. As stated earlier, the requirements of natural justice vary from case to case and therefore the observations which are relevant in certain circumstances need not necessarily be applicable to other circumstances. In the light of the facts and circumstances of this case, it cannot be stated that the rules of natural justice,

embodied in sec. 124 of the Customs Act are violated. In my view the observation of the Supreme Court in *Kanungo and Company Vs. Collector of Customs and Others*, , although made in the context of the provisions of the Sea Customs Act, 1878 is applicable with equal force to the facts and circumstances of the present case falling under the Customs Act of 1962. Whatever be the place of cross-examination in a hearing contemplated under Sec. 124(c) of the Customs Act, the facts and circumstances of the present case leave no doubt that the petitioner was not denied a reasonable opportunity, although he did not avail himself of what was offered. In the circumstances, it cannot be stated that the petitioner is sufficiently aggrieved to invoke the jurisdiction of this Court under Article 226 or Art. 227 of the Constitution. The Original Petition is unsustainable. I dismiss the same, but I direct the parties to bear their respective costs.

21. I wish to express my appreciation for the valuable assistance rendered by the learned Additional Advocate-General Sri T. C. N. Menon, as *amicus curiae*, and by Sri V. Rama Sheno and Sri K. Prabhakaran appearing for the parties.

22. Issue carbon copy of this judgment to counsel for the petitioner on payment of the usual charges and to counsel for the respondent free of cost.