

**(1982) 11 CAL CK 0003**  
**In the Calcutta High Court**

|                                   |    |            |
|-----------------------------------|----|------------|
| Susanta Kumar Adhikary and Others | Vs | APPELLANT  |
|                                   |    |            |
| The State of West Bengal          |    | RESPONDENT |

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**Date of Decision :** 29-11-1982

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 451, 452, 457, 482  
Customs Act, 1962 — Section 10, 104, 11, 111, 115

**Citation :** (1983) CriLJ 772 : 87 CWN 287

**Hon'ble Judges :** Amitabha Dutta, J

**Bench :** Single Bench

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**Judgement**

Amitabha Dutta, J.—This revisional application is directed against an order dated 20th April, 1982 passed by the learned Sub-Divisional Judicial Magistrate, Barasat in Customs Case No. 112 of 1982 rejecting the petitioner's application for return of the goods seized by the Customs Officer.

2. It appears that the petitioners while they were transporting readymade garments old and used said to be of foreign origin in 28 gunny bags by a Matador van from Maslandapur to Calcutta, were intercepted at Santospur on National Highway-34 on 24th March 1982 at 1 a.m. by the Night Preventive Patrol of the Customs Department, and they were arrested u/s 104 of the Customs Act, 1962. The carrier Matador van and the garments in question were also seized as the petitioners failed to produce any document in support of lawful importation of the goods and the Customs Officer had reason to believe that they were unlawfully imported into India from Bangladesh in contravention of Sections 11 and 11B of the Customs Act, 1962 and other allied Acts. So the aforesaid garments and the Van are said to be liable to confiscation under Sections 111 and 115 respectively of the Customs Act, 1962. On 24th of March, 1982 Inspector of Customs, Barasat Customs (Preventive Section), reported the arrest of the petitioners to the learner) Sub-Divisional Judicial Magistrate. Baraset stating the aforesaid facts in his report. The learned Magistrate on the application of the petitioners granted them bail. Thereafter the petitioners applied before the learned Magistrate for return of the seized articles. The learned Magistrate

rejected the prayer for return on the ground that they are almost of the case and the subject-matter of investigation regarding their foreign origin, as alleged by the Customs Officer.

3. In challenging the order of the learned Magistrate rejecting the application for return of the seized articles, it is submitted by the learned Advocate for the petitioners that as the report of the Customs Officer to the learned Magistrate indicated that the goods were seized for alleged violation of the provisions of the Customs Act, it is tantamount to giving the control over the seized goods to the learned Magistrate and he had therefore power to grant interim custody of the seized goods in the interest of their proper preservation pending final disposal of the case either before the Customs authority in adjudication proceeding or before the Criminal Court, If any complaint is filed for trial of the petitioners. It is submitted that in any event this Court has inherent power u/s 482 of the Code to order grant of interim custody of the seized articles to the petitioners even if the provisions of Section 451, 452 or 457 of the Criminal P. C. did not in terms apply to the custody or disposal of the seized articles. On the other hand, it is submitted on behalf of the Customs Department that the Customs Officer who has arrested the petitioners and seized the garments in question which were being illegally imported from Bangladesh is not a Police Officer and he does not investigate the case under Chap. 14 of the Criminal P. C. and therefore the provisions of Section 451, 452 or 457 of the Cr. P.C. are not applicable and the learned Magistrate had no authority to grant interim custody of the seized goods to the petitioners. In this connection, reference has been made to the decision of Delhi High Court in the case of Assistant Collector of Customs, Customs House, Indraprastha Estate, New Delhi Vs. Tilak Raj Shiv Dayal, Dehradun, which supports the contentions raised on behalf of the Customs in this case. His Lordship Om Prakash, J. held in that case that the cumulative effect of the provisions of the Customs Act referring to the provisions of Sections 124. 125 and HO, Sub-section (2) of the said Act is that a Magistrate has no jurisdiction to make orders with respect to the goods seized by the Customs Officer and liable to confiscation under the provisions of the Customs Act, at least, before the launching of the Criminal proceeding. With due respect, I agree with this view. 4. Both sides have referred to the decision of the Supreme Court in the case of Remo Paul Altoe Vs. Union of India (UOI), in which the point at issue was different. In that case the validity of an order for confiscation made by the learned Magistrate u/s 452(1) of the Code while the confiscation proceeding was pending before the Customs Authority, was challenged before the Supreme Court. The Court observed that it was not necessary to go into the question as to whether the Customs Authority and the Criminal Court had concurrent jurisdiction in the matter and held that the mere fact that foreign currency seized was the property in respect of which the offence was committed was by itself not sufficient to justify an order u/s 452(1) of the code and the order passed by the learned Magistrate besides being unwarranted was likely to create complication, if the Customs Authorities made any order with which the Magistrate's order was

inconsistent. In that case the judgment does not show that the seized foreign currency was not produced before the learned Magistrate, and was not in the custody or control of the Court when the order of confiscation was made. In the present case, also it cannot be said from the report of the Inspector of Customs before the learned Magistrate that the seized goods were produced before the learned Magistrate so as to give him the custody and control over the goods, although he has in his impugned order loosely described them as almost Regarding the power of this Court u/s 482 of the Code invoked on behalf of the petitioners. I do not think that this is one of such exceptional cases where it is necessary at this stage to exercise that power for the ends of justice. It is submitted on behalf of the Customs that they have taken all possible steps for preservation of the seized articles and that they have special arrangements where more valuable garments are preserved. In any event, it appears that six months have elapsed and no notice u/s 10(2) of the Customs Act has yet been served on the petitioners for starting adjudication proceeding by the Customs Authorities. I, therefore, order that if the Customs Authorities do not start adjudication proceedings within one month from this date by service of notice on the petitioners the petitioners shall be entitled to get the interim custody of the seized articles On a bond to be furnished to the satisfaction of the learned Magistrate.

5. The application is thus disposed of.