

Case No : Criminal Original Petition No. 3807 of 1992

The Superintendent of Customs and Central Excise, Nagercoil	APPELLANT
Vs	
R. Sundar	RESPONDENT

Date of Decision : 30-04-1992

Criminal Procedure Code, 1973 (CrPC) — Section 102, 173, 190, 2, 451
 Customs Act, 1962 — Section 100, 101, 102, 103, 104
 Evidence Act, 1872 — Section 25
 Penal Code, 1860 (IPC) — Section 131C, 173, 4, 41, 42

Citation : (1993) CriLJ 956 : (1992) 40 ECC 327

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : Mr. P. Rajamanickam, Central Government Public Prosecutor, for the Appellant; Mr. N.T. Vanamamalai, for Mr. V. Gopinath, for the Respondent

Judgement

1. The Customs and Central Excise Personnel, attached to the Customs Preventive Unit, Nagercoil, on credible information regarding the alleged

clandestine transport of smuggled cloves from Tharvaikulam to Kunjanvilai sent by one Thangadurai and Thangaraji of Tuticorin to one Sundar of

Nagercoil through lorry bearing registration number TDS 1332, rushed to Valliyoor on 10-2-1992 and kept a watch for the arrival of the

suspected vehicle. On sighting such a vehicle, the said personnel stopped the same and on examination, they found only cloves being strewn and

spilled in the lorry. They, it is said, interrogated one J. Royappan, the driver and one Senthil, elder brother's son of the aforesaid Thangaraj,

cleaner of the lorry and on such interrogation, they derived solidified satisfaction as to the veracity of the information earlier received, on their

making a frank and true disclosure of what all transpired. They, it is said

discharged the said cloves in the godown at Door No. 203/1-A1,

Kunjanvilai, Nagercoil belonging to the said Sundar. The Customs personnel therefore took the lorry into their possession.

2. They then proceeded to the godown, accompanied by the said driver and the cleaner and found the said godown locked. None-the-less, they

were able to perceive the presence of certain persons inside the godown engaged at work, through the intermittent space available between the

doors at the entrance. Those persons at work, sensing the presence of the Customs personnel, were stated to have fled from the scene, by scaling

over the rear wall of the godown. The Customs Personnel, it is said, informed the developments to the Assistant Collector, Tuticorin, who, in turn,

it is said, instructed the Customs Preventive Unit, Nagercoil to rush to the spot with men and materials to break open the lock of the godown under

his warrant being sent and to seize the suspected contraband cloves, by taking all steps.

3. Accordingly the Superintendent of Customs and Central Excise, Customs Prevention Unit, Nagercoil, rushed to the spot, accompanied by the

personnel of the Department. Steps were also stated to have been taken to fetch Sundar, the owner of the godown, who was stated to transacting

business in cloves and other allied products, in the name and style ""Sunrise Agencies : Nagercoil"". To the dismay of the officials, the premises of

Sunrise Agencies"" Nagercoil was found locked and the owner, namely, Sundar could not be traced out. In such a situation, there was no other go

for the customs personnel, except to break open the lock of the said godown, in the presence of witnesses.

4. On such breaking open, the driver, it is said, pointed out the cloves heaped inside the godown in a wet condition to be those discharged by him

from the lorry in question, sometime prior to his interception. The cloves were sized under the cover of a mahazar in the presence of witnesses. The

seized contraband cloves, it is said, weighed 3,700 kilograms, valued about Rs. 7,40,000/-.

5. Deriving subjective satisfaction as to the contraband cloves having been smuggled into India from Sri Lanka illicitly, a case has been registered in

O.R. no. 2 of 1992 by the Superintendent of Central Excise and Customs, Customs Preventive Unit, Nagercoil under S. 11 of the Customs Act,

1962 read with S. 3(1) of the Imports and Exports Control Act, 1947 and investigation had been taken up. The driver and cleaner of the lorry had

been taken into custody and produced before Court for the purpose of remand. Further investigation was in progress.

6. The owner of the godown, namely Sunder filed Crl.M.P. No. 222 of 1992 on the file of the Additional Chief Judicial Magistrate, Madurai under

S. 457 of the Code of Criminal Procedure, 1973 (Act II of 1974 - for the short "the Act") praying for the return of the seized cloves to him.

7. On receipt of process, the Superintendent of Customs and Central Excise, Customs Preventive Unit, Nagercoil entered appearance through

Special Public Prosecutor and resisted strongly and stoutly the move for the return of the seized cloves by stating that the petition filed as such is

not maintainable.

8. Learned Magistrate, on consideration of the materials placed and after hearing the arguments of respective learned counsel for the petitioner as

well as learned Special Public Prosecutor, passed an order directing the return of the seized cloves to Sundar, on his executing bond for Rs.

7,50,000/- with two sureties, each for a like-sum with a further direction for deposit of the sum of Rs. 7,40,000/-, being the value of the seized

cloves in Court, in case any final order to that effect is passed by the trial or the appellate Courts. Aggrieved by the said order, the Superintendent

of Customs and Central Excise, Customs Preventive Unit, Nagercoil came forward with the present action invoking the inherent jurisdiction of this

Court under S. 482 of the Code praying to set aside the impugned order.

9. From the pith and substance of the submissions of Mr. P. Rajamanickam learned Special Public Prosecutor for the Department and Mr. N. T.

Vanamamalai, learned Counsel appearing for Sundar, the following points arise for consideration :-

1. Whether the Criminal Court, in case of seizure of alleged contraband goods by the Customs Personnel, has the requisite power to entertain an

application under any of the provisions adumbrated under Chapter XXXIV of the Code and order return of such goods to the person, from whom

they were seized, pending further proceedings.

2. What consequences are likely to flow from the existence or otherwise of the jurisdiction of Criminal Court, in such matters.

10. Chapter XXXIV of the Code contains certain statutory provisions in the shape of Ss. 451 to 459 as respects the disposal of the seized

property at various stages of the proceedings. Of those provisions, Ss. 451, 452 and 457 may usefully be referred to as being relevant in the instant case.

11. Section 451 is captioned as "Order for custody and disposal of property pending trial in certain cases" : It runs thus :-

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper

custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if is otherwise

expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation :- For the purposes of this "Section "property" includes -

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

12. Section 452 deals with nature of the order to be passed for disposed of property at conclusion of trial. It reads thus :-

452(1). When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by

destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document

produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission

of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof,

without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such

property to the Court if the order made under sub-sec. (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-sec. (1)

direct the property to be delivered to the Chief Judicial

Magistrate, who shall thereupon deal with it in the manner provided in Ss. 457, 458 and 459.

(4) Except where the property is live-stock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-

sec. (2), an order made under sub-sec. (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been

disposed of.

(5) In this section the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such

property, as has been originally in the possession or under the control of any party, but also any property into or for which the same may have

been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

13. S. 457 prescribes procedure to be followed by police upon seizure of property. It is couched in the following terms.

457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property

is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of

such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting

the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such condition (if any) as the magistrate

thinks fit and if "such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which

such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months

from the date of such proclamation.

14. From a cursory perusal of the various provisions, as extracted above, it is rather crystal clear that a Magistrate is empowered under S. 451 to

deal with the property seized and produced before Court during any inquiry or trial is concluded, while S. 457 is a general provision applicable to

all cases before there is any inquiry or trial, in case of report of seizure of

property by the police to a Magistrate under the provisions of the Code, but none-the-less such property not having been produced before Criminal Court during an inquiry or trial.

15. The present S. 451 corresponds to S. 561-A; present S. 452 to 517 and 518 while present S. 457 to 523 of the old (1898) Code. Section

523 of the old Code is couched in the following terms :-

523(1). The seizure by any police officer of property taken under S. 51, or alleged or suspected to have been stolen, or found under

circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as

he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such

person cannot be ascertained, respecting the custody and production of such property.

(2) if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate

thinks fit. If such person is unknown, the Magistrate, may detain it and shall, in such case, issue a proclamation specifying the articles of which such

property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the

date of such proclamation.

16. The present S. 457 is incorporated pursuant to the recommendations made by the Law Commission in its 41st Report. It appears that the

Commission lost sight of the fact that Ss. 51 and 102 in themselves did not contain any requirement that the properties seized should be reported

by the Police Officer to the Magistrate. In Old S. 523(1), this obligation was created. Unfortunately, this is omitted from the present section and

the fact is that if the Police Officer keeps in his custody the properties seized under Ss. 51 and 102 and does not report them to the Magistrate, S.

457 is not attracted and the Police Officer will have an arbitrary power of disposal of such properties.

17. Useful reference, at this juncture, may also be made to the salient provisions adumbrated under Ss. 4 and 5 of the Code. S. 4 dealing with the

trial of offences under the Indian Penal Code and other laws prescribes,

4(1). All offences under the Indian Penal Code (45 of 1860) shall be investigated,

inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, 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.

18. Section 5 dealing with "saving" states :

5. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.

19. From the provisions, as extracted above, it is thus clear that S. 4 provides for the procedure to be followed in every investigation, inquiry or trial in regard to offences under the Indian Penal Code as well as under any other law. In the former, the procedure as laid down in the Code is to be followed. But in the latter, this is subject to any enactment for the time being in force, which regulates the procedure in such cases. In other words the procedure in the two cases is the same, except to the extent that the special enactment regulates the manner to place of investigating, inquiring into, trying or otherwise dealing with such offences.

20. Section 5 is a new Section and it corresponds to sub-sec. (2) of S. 1 of old (1898) Code. The language used is the same except a few drafting changes. This new section provides that the Code will not affect any special or local law in force. The principle is that the general Act does not affect the Special Act. This is an application of the maxim : ""Generalia Special bus no Derogant (General things do not derogate from the special).

In short, Special Acts are not repealed by the General Acts. The terms ""special Law"" or ""local Law"" are not defined in the Code. However,

Sections 41 and 42 of the Indian Penal Code give an indication as to the meaning of those two phraseologies "special law" and "local law". For the applicability of the provisions of Ss. 41 and 42 of the Indian Penal Code, reference may be made to S. 2(y) of the Code, which prescribes.

Words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that

Code (45 of 1860).

21. A "special law" is defined under S. 41 of the Indian Penal Code thus :

A "special law" is a law applicable to a particular subject".

22. A "local law" is defined under S. 42 of the Indian Penal Code and it runs thus :

A "local law" is a law applicable only to a particular part of India.

23. Section 5 of the Code uses the expression, "in the absence of a specific provision to the contrary".

This means a provision, which is specific in affecting the special or local law. But it need not be in the Code itself it may be in the local or special

law. These words do not refer to any possible contrariety between a specific provision in the Code and a provision in a special statute. Nor that

one provision can be said to be a specific provision contrary to another, the former must completely cover the field of operation of the latter and

must altogether nullify it.

24. The "Saving" provisions in S. 5 of the Code lay down that ordinarily the Code will not affect -

- 1) any special law;
- 2) any local law
- 3) any special jurisdiction or power; and
- 4) any special form of procedure.

But the existence of any specific contrary provision either in the Code itself or in the special law or local law will have a contrary effect. In other

words, the Code shall be applicable. The special law may also provide for the application of the Code. But the non-existence of any specific

provision to the contrary will not affect any special or local law.

25. The Customs Act, 1962 without fear of contradiction can be stated to be a special law coming within the four corners of S. 41 of the Indian

Penal Code. Chapter XIII of the Customs Act contains provisions in the shape of Ss. 100 to 110 dealing with searches, seizure and arrest.

Chapter XIV containing Ss. 111 to 127 deals with confiscation of goods and conveyance and imposition of penalties. Chapter XV deals with the

forums of appeals, as reflected by the salient provisions adumbrated under Ss. 128 to 131-C. Chapter XVI likewise dealing with offences and

prosecutions contains provisions in the shape of Ss. 132 to 140-A.

26. A cursory perusal of the various statutory provisions adumbrated in the various chapters, as referred to above, points out, in unmistakable

terms, special provisions had been indicated as respects searches, seizure, arrest, confiscation of goods, imposition of penalties, appeals and

procedure for prosecution of persons accused of offences; but, nonetheless no special provision had been enacted regarding the applicability of the

Code as respects the disposal of the property, sized under the Customs Act, under any circumstances whatever, except by the machinery in

accordance with the provisions contained therein.

27. In regard to certain areas covered by specific provisions under the Customs Act, there cannot be any pale of controversy as to the non-

applicability of the provisions under the Code, on the face of the salutary effect of the combined provisions of Ss. 4 and 5 of the Code, as referred

to above.

28. At this juncture, it may be stated, without any fear of contradiction - why ? say, with added emphasis, the legal position being very well-settled

- that though the Customs personnel are endowed with powers of search, seizure and arrest, akin to those of police personnel, yet, they are, for all

practical purposes, not to be construed as "police personnel" under S. 25 of the Evidence Act, on the salutary principle that they are not having the

powers of filing of final report as adumbrated under S. 173(2) of the Code and what all permissible for them to do is to launch a prosecution, in the

form of a complaint, before competent forum, as against persons accused of offences under the Customs Act, of course, after obtaining necessary

and requisite sanction of the competent authority for such prosecution. The further settled position is that they are endowed with the quasi-judicial

powers of summoning persons to give evidence and produce documents, apart from examining them and the statement recorded by them, in the

course of such proceedings, is an admissible piece of evidence and this aspect of the matter, gives the Customs personnel an elevated status to that

of the police personnel and obviously this status had been conferred on them to have a check and control over the menace of smuggling activities

affecting the very economy of this country.

29. To reinforce the principles, as aforesaid reference may be made to certain

judicial pronouncements of this and other High Courts and the apex

Court of this country as well. In Assistant Collector of Customs, Customs House, Indraprastha Estate, New Delhi Vs. Tilak Raj Shiv Dayal,

Dehradun, , the Customs Preventive Staff, New Delhi had on the 29th August, 1968 intercepted a Car No. MHJ-1116, near Jamuna Bridge, Bal

Kishan Khanna and other persons were travelling in that car. On the personal search of Bal Kishan Khanna, 13 bars of gold weighing 130 tolas

with foreign markings were recovered. The Customs Preventive Staff believed that the 13 bars of gold had been imported into India without a

permit as required under law and were liable to be confiscated and that the car was also liable to be confiscated. The Customs Preventive Staff

had, therefore, taken the 13 bars of gold and the car into possession.

a) On the 4th September, 1968, Tilak Raj respondent, brother of Bal Kishan Khanna, made an application, in the Court of the Sub Divisional

Magistrate, praying that the car seized may be returned to him. The application was opposed on behalf of the Customs Preventive Department. It

was pleaded that as the car was liable to be confiscated u/s 115(2) of the Customs Act, only Customs Officers had jurisdiction to take

proceedings with respect to the car and that as no criminal proceedings had been launched in the Court with respect to the smuggling of the 13

bars of gold, the Magistrate had no jurisdiction to return the car. That application was dismissed on 10th September 1968, on the ground of non-

prosecution as Tilak Raj Respondent had failed to put in appearance.

b) On the 13th September, 1968, Tilak Raj, respondent made another application for the return of the car on spurdari. That application was

opposed by the Customs Preventive Department on the same grounds on which the earlier application had been opposed. Learned Sub Divisional

Magistrate allowed the application of Tilak Raj, respondent and returned the car to him on spurdari. He held that as the application was for the

return of the car on spurdari only, it did not debar the Customs Preventive Department to confiscate the car under the law.

c) The Assistant Collector, Customs went up in revision to the Court of Session against the order of Sub Divisional Magistrate. The revision

petition was heard and disposed of by learned Additional Sessions Judge, who held that the order of the Sub-Divisional Magistrate could not be

sustained either under S. 516-A (corresponding to present S. 451) or under S. 517 (corresponding to present S. 452) but could be sustained

under S. 523 (corresponding to present S. 457) of the old (1898) Code. He therefore dismissed the revision petition.

d) The Assistant Collector of Customs agitated the matter further in revision to the High Court.

e) The contention on behalf of the petitioner was that the Sub Divisional Magistrate had no jurisdiction to order the return of the car on spurdari to

Tilak Raj respondent under the provisions of S. 523 of the old (1898) Code. The argument was that the Customs Officers were not police officers

within the meaning of that Section and the provisions of that Section were, therefore, not applicable to the property seized by the Customs Officers

under S. 110 and 115 of the Customs Act.

f) His Lordship Om Prakash, J. of Delhi High Court, in consideration of the contentions raised, expressed thus :-

The contention raised on behalf of the petitioner, appears to have force. The expression "police officer" used in S. 523, Criminal Procedure

Code, is to be construed strictly and to include only police officers properly so called. The expression is not to be construed liberally so as to

include officers of other departments on whom certain powers of a Police officer may have been conferred for certain purposes. In *Badku Joti*

Savant Vs. State of Mysore, , the expression "Police Officer" used in Clause (b) of S. 190, Criminal Procedure Code, was interpreted to mean,

on the scheme of that Code, only a police officer properly so called. The ratio of the decision applies to interpretation of the expression "Police

Officer" used in S. 523, Criminal Procedure Code. That expression will mean only a police officer properly so called. The expression will not

include Customs Officers though the latter have been invested with some powers of a police officer.

7. A Custom Officer will not come within the ambit of the expression "police Officer" as used in S. 523, Criminal P.C. even if the expression be

interpreted in a broad way so as to include officers other than police officers properly so called. The powers which the police officers enjoy are

powers for the effective prevention and detection of crime in order to maintain law and order. The powers of "Customs Officers" are really not for

such purpose. Their powers are for the purpose of checking the smuggling of goods and the due realization of Customs duties and to determine the action to be taken in the interests of the revenues of the country by way of confiscation of goods on which no duty had been paid and by imposing penalties and fines, Vide *The State of Punjab Vs. Barkat Ram*, . It was held by their Lordships that a Customs Officer was not a police Officer within the meaning of S. 25 of Evidence Act. The reasons, given by their Lordships, for holding that a Custom Officer was not a police Officer under S. 25, Evidence Act, will apply with equal force to the present case.

In *Badku Joti Savant Vs. State of Mysore*, the question was whether the Central Excise Officer under the Central Excises and Salt Act was a

Police Officer within the meaning of that expression in S. 25 Evidence Act. Their Lordships held that a Central Excise Officer was not a Police

Officer, as he had no power to submit a charge-sheet under S. 173, Criminal Procedure Code, though he was empowered to arrest a person and

to enquire the charge against him and for that purpose to exercise the same powers as the officer in charge of a Police Station may exercise. The

ratio of the decision fully applies to the present case. A Customs Officer cannot be regarded as Police Officer within the meaning of that expression

in S. 523, Criminal Procedure Code, as he has no power under the Customs Act to submit a charge-sheet under S. 173 of the Code, though he is

invested with the powers of a Police Officer regarding arrest and search.

8. The question whether a Customs Officer can be considered as a Police Officer within the meaning of S. 25, Evidence Act, was again

considered by their Lordships of the Supreme Court in Criminal Appeal No. 27 of 1967, D/- 18-10-1968 (SC) and other connected appeals.

Their Lordships reviewed their previous decisions and came to the conclusion that a Customs Officer was not a Police Officer within the meaning

of that section as he has no power to submit a report under S. 173, Criminal Procedure Code.

9. It follows that a Customs Officer under the Customs Act, is not a police Officer within the meaning of that expression as used in S. 523,

Criminal Procedure Code, whether that expression is construed strictly or liberally and the provisions of that Section are not applicable to the

property seized by a Customs Officer under the Customs Act, at least before

criminal proceedings are launched with respect to the property

seized. In the present case, admittedly criminal proceedings have not been launched. The Sub Divisional Magistrate had, therefore, no jurisdiction

to order the return of the car seized under provisions of the Customs Act to Tilak Raj respondent. The order is liable to be set aside

11. The matter can be looked at from another angle, so far as the jurisdiction of the Magistrate to make an order for the disposal of the property

seized by the Customs Officer under the provisions of the Customs Act. Sub-sec. (2) of S. 104 of the Customs Act empowers certain Customs

Officers to arrest a person under certain circumstances. Sub-sec. (2) of that section provides that every person arrested under sub-sec. (1) shall,

without unnecessary delay, be taken to a Magistrate. But there is no such obligation on a Customs Officer to produce the property, seized by him,

under the provisions of the Customs Act, before a Magistrate. The Customs Act provides procedure for the confiscation of the property seized by

the Customs Officers. Section 122 of the Act lays down the powers of various Customs Officers to make adjudication about confiscation and

penalties. Section 124 provides that a show cause notice should issue to the owner of the goods seized and that he shall be given an opportunity of

making a representation in writing within a reasonable time as may be specified in the notice. Section 125 authorises a Customs Officer who

adjudges confiscation under the Act to give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit.

Section 110(2) provides that where any goods are seized under sub-sec. (1) and no notice in respect thereof is given under Clause (a) of S. 124

within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. The cumulative

effect of the above provisions appears to be that a Magistrate has no jurisdiction to make orders with respect to goods seized by the Customs

Officers and liable to confiscation under the provisions of the Customs Act, at least before the launching of the criminal proceedings.

30. In *Susanta Kumar v. State of West Bengal* 1983 Cri LJ 772, the petitioners while they were transporting ready made 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 under 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 Ss. 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 Ss. 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 learned Sub Divisional Judicial Magistrate Barasat 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 alams of

the case and the subject-matter of investigation regarding their foreign origin, as alleged by the Customs Officer.

(a) 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 proceedings or before the Criminal Court, if any complaint is filed for trial of the petitioners. It is

submitted that in any event the High 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 S. 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

Chapter 14 of the Criminal P.C. and therefore the provisions of S. 451, 452 or 457 of the Criminal P.C. are not applicable and the learned

Magistrate had no authority to grant interim custody of the seized goods to the petitioners.

(b) In considering the rival submissions, his Lordship Amitabha Dutta, J., of Calcutta High Court, placing reliance on the decision of the Delhi High

Court reported in Assistant Collector of Customs, Customs House, Indraprastha Estate, New Delhi Vs. Tilak Raj Shiv Dayal, Dehradun,

respectively agreeing with the views, expressed by his Lordship Om Prakash, J., held that the cumulative effect of the provisions of the Customs

Act referring to the provisions of Ss. 124, 125, 110(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 launching of the criminal

proceedings.

31. With due respect, I agree with the views of his Lordship Om Prakash, J., of Delhi High Court and his Lordship Amitabha Dutta, J., of Calcutta

High Court.

32. No occasion had arisen before their Lordships of the Delhi and Calcutta High Courts in the cases, as referred to above, to determine the

question whether after the launching of criminal proceedings, the Magistrate has jurisdiction to make orders with respect to the disposal of the

goods seized and liable to confiscation under the provisions of Customs Act. Such an occasion arose in the The Assistant Collector of Customs

Vs. Misrimal and Another, and the facts therein briefly stated are at page 1551 :

(a) A search was conducted in the shop of the respondents on 8-12-1969 by a Preventive Officer of the Customs Department, who seized 384

wrist watches of foreign make in the reasonable belief that they had not been licitly imported into this country. Adjudication proceedings were

taken by the Customs Department and after due observance of all formalities the Assistant Collector of Customs levied a penalty of Rs. 5,000/- on

the first respondent and ordered confiscation of the wrist watches.

(b) In addition to the adjudication proceedings, a criminal prosecution was also launched. The Chief Metropolitan Magistrate, who tried the case,

acquitted the respondents on the ground that the prosecution had failed to show

that the wrist watches were smuggled goods liable to confiscation under S. 111 of the Customs Act, 1962. Following the decision in *Misrimal Hansraj Vs. Union of India (UOI)*, the Magistrate held that the respondents were entitled to the return of the wrist watches and the Customs authorities, who were in possession of the wrist watches were directed to redeposit them into Court for effecting their delivery to the second respondent. The Customs Department preferred an appeal to the Principal Sessions Judge against that part of the trial Court's Order which directed the redeposit of the property. Relying on the decisions, as referred to above, learned Sessions Judge, also dismissed the appeal.

(c) The Customs Department further agitated the matter in revision before this Court. In the revision, after elaborate discussion of the various provisions of the Customs Act and the decisions of the various Courts, his Lordship Natarajan, J., (as he then was) found himself was unable to agree with the decision relied upon by the trial and appellate Court decided by Krishnaswamy Reddy, J., and considered it necessary that the matter should be placed before a Bench. That was how the matter came up before a Division Bench of this Court, consisting of their Lordships Kailasam, C.J. and Balasubramanyan, J. Their Lordships considered the reference and expressed the views reflected in paragraph 10, which reads as follows :-

10. We shall now refer to the decision of Krishnaswamy Reddy, J., in *Misrimal Hansraj Vs. Union of India (UOI)*, with which we are unable to agree. The reasoning of the learned Judge is that, though under the Customs Act the goods were confiscated and they vested in the Central Government, when it was produced before the Criminal Court which exercised powers under S. 517, Cr.P.C., the Court disposed of those goods which had come into its custody or which were concerned in the offence or which had been used in the commission of the offence. As the wrist watches were produced before the Court as goods in respect of which an offence had been committed, they were produced before the Court as offending goods and not as confiscated goods vesting with the Central Government. When the goods had come into the custody of the Court, it was not concerned with what happened subsequent to the seizure, but it was concerned only with the fact whether the goods were concerned with

the offence and whether they were used in the commission of the offence. The learned Judge proceeded to observe that vesting in the Central

Government would, in the context, mean that the Central Government would be in possession of the property subject to the decision of a

competent authority in respect of the disposal of the property, and that the vesting in the Central Government did not alter the nature of the goods,

namely, offending goods, concerned with the offence, in respect of which the accused was prosecuted. In conclusion, the learned Judge observed

that the Criminal Court had unfettered power to dispose of the property under S. 517, Cr.P.C. independent and irrespective of the order of

confiscation made by the Department. We are totally unable to agree with the view of the learned Judge. When the goods have been validly

confiscated under a valid law, it will not be open to the criminal Court to ignore that law and make an order regarding the disposal of the property.

An order of confiscation duly made can only be altered or set aside by authorities as contemplated under the Act and not interfered with by

Criminal Courts. As stated by Natarajan, J., in his order referring the matter to the Bench, the scope and effect of Ss. 126 and 127 of the Customs

Act, 1962 has not been properly appreciated by the learned Judge. For the reasons already stated, we agree with the view of Natarajan, J., and

overrule the decision of Krishnaswamy Reddy, J., in *Misrimal Hansraj Vs. Union of India (UOI)*,

33. In view of the discussions as above, it goes without saying that in all cases where alleged contraband articles were seized by the personnel

belonging to the Customs and Central Excise Departments under the provisions of the Customs Act, 1962, the disposal of the properties so seized

is permissible only under the machinery provided therein and not otherwise and the Criminal Court therefore has no jurisdiction or requisite power

either to order for interim custody of such seized articles pending inquiry or trial or for the return of the same after the conclusion of the trial to the

person, from whom they were seized, and even in the extreme case of adjudication, penalty and confiscation proceedings, not having been

completed by the time the prosecution launched coming to a successful termination, the Criminal Court is left with no other alternative except to

pass an order for disposal of such seized goods only in accordance with the provisions of the Customs Act, 1962 i.e., the machinery provided

therein would take the necessary course to pass an order as respects the disposal of the seized goods in accordance with the provisions contained therein.

34. The concomitant and corollary consequence flowing from such a conclusion is that the Criminal Court cannot enter into any further discussion

as respects the question revolving upon the entertainment of any reasonable belief on the part of the Customs personnel at the time of the alleged

seizure that the goods seized were smuggled ones and give a finding, after providing an opportunity to the parties to let in evidence as to whether

the goods seized were smuggled goods or not and in this view of the matter, the findings given by the Court below reflecting on those aspects of

the matter cannot at all be allowed to stand; consequently such findings have to be necessarily and are accordingly set aside, thereby making it

clear that the findings so recorded cannot at all be utilised by either of the parties at any stage of further proceedings before any forum whatever.

35. Subject to the above observations, the impugned order of the Court below stands set aside.

36. The petition is ordered accordingly.

37. Order accordingly.