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# BALKRISHNA CHHAGANLAL SONI

v.

# STATE OF WEST BENGAL

*October* 22, 1973

[H. R. KHANNA, V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

B *Customs Act* 1878 (8 *of* 1878)—*S.* 107—*"any persons" and "any place" meaning of—Section whether applies to examination of accused only.*

*Defence of India Rules* 1962—*r.* 126 *P.* (2)(*ii*) *if applies to smuggled gold.*

The appellant was prosecuted for possession of gold bars of foreign origin in his shop and a gold bar of indigenous origin in his residence. He was charged under r. 126 I(10) read with r. 126 P(2)(ii), and r. 126 I(i) and
C r. 126P(i)(i) of the Defence of India Rules, 1962. The Customs authorities had recorded a statement of the appellant in which he said that the gold recovered from his house represented ornaments given to his wife by his mother, melted by her into a bar and kept without his knowledge in the almirah, the key of which was with him.

The appellant was convicted by the trial court. On appeal he was acquitted on one charge but the sentence was sustained on other charges.

D It was contended in this Court that (i) r.126P(2)(ii) could not apply to smuggled gold consistently with the view that declaration of non-ornament gold did not cover smuggled gold, and (ii) that s. 107 of the Customs Act did not apply to examination of the accused but only to other witnesses to be questioned and hence his statement (Ex. 9) should be excluded.

Dismissing the appeal, and confirming the sentence.

HELD: (*Per* Krishna Iyer and Sarkaria JJ) Rule 126P (2)(ii) penalises
E a person who had in his possesion or under his control any quantity of gold in contravention of any provision of Part XII-A of the Rules. It is not possible to cut back on the width of the language used bearing in mind the purpose of plenary control the State wanted to impose on gold and exempt smuggled gold from the expression "any quantity of gold" in that sub-rule. That construction would stultify the law. There was no doubt that the accused was in control of the indigenous gold recovered from his residence and there was no case that a declaration had been made regarding it. It is clear from r.126P(2)(ii) that
F domestic gold was also subject to the declaration under this rule. Its possession was clearly an offence. [113B-C]

Section 107 of the Customs Act is wide in its terms and is clearly designed to facilitate the investigatory process by examination without restriction on person, place or time. "Any person" in the section covers every person, including a suspect and potential accused. These words of the statute have to be interpreted in the light of the policy and purpose of the law. The object of s. 107 indicates that while the normal process of enquiry is facilitated by s. 108,
G investigatory emergencies are taken care of by s. 107. Situations may arise where the failure to question a witness quickly may mean irretrievable loss of a valuable material and s. 107 meets this need. The context in which the words "any person" occur, the object of the provision and the policy underlying ch. XII assume relevance and become material in the construction of the text. Nor does the section exclude the Customs House as a venue for such examination. "Any place" in the section obviously means any place and a contrary view is untenable. This provision is plain that an authorised customs official is
H entitled to examine any person at any time, at any place in the course of enquiry. [113D-G]

Social and economic offences stand on a graver footing in respect of punishment. The new horizons in penal treatment with hopeful hues of correction and rehabilitation are statutorily embodied in India in some special enactments;

but crimes professionaly committed by deceptively respectable members of the community by inflicting severe trauma on the health and wealth of the nation—and the members of this neo-criminal tribe are rapidly escalating—form a deterrent exemption to humane softness in sentencing. [114B; D] A

The penal strategy must be informed by social circumstances, individual factors and the character of the crime. Smugglers, hoard rs, adulterators and others of their ilk have been busy in their underworld bec use the legal h rdware has not been able to halt the invisible economic aggressor inside. While penal treatment should be tailored to the individual, in the extrem category of professional economic offenders, incaraceration is peculiarly potent. The off nces for which the appellant has been convicted are typical of respectable rack teers who, tempted by the heavy pay-off, face the perils of the law and hope that they could smuggle on a large scale and even if struck by the court they could get away with a light blow. [114-EF] B

To the extent to which gold smugglers and other anti-social operators in the field of crime can be given an unhappy holiday in jail, the courts must help the process on conviction if judicial institutions are not to be cynically viewed by the community. [115B] C

*Per* Khanna J : There is nothing in the language of s. 107 to indicate that the words "any person" do not include a person who is subsequently arraigned as an accused. The examination contemplated by cl. (b) is of a person acquainted with the facts and circumstances of a case. Where a person is found in possession of smuggled gold he would obviously be a person who can be considered to be acquainted with the facts and circumstances of the case. In most of the cases he would indeed be the best person to throw light with regard to the smuggled gold found in his possession. No valid reason can be discerned for excluding the examination of such a person from the purview of s. 107 of the Customs Act. [109B-C] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 73 of 1970.

Appeal from the judgment and order dated the 10th December, 1969 of the Calcutta High Court in Criminal Appeal No. 518 of 1969. E

*D. Mookherjee* and *D. N. Mukherjee,* for the appellant.

*P. K. Chatterjee* and *G. S. Chatterjee,* for the respondent.

The Judgments of the Court were delivered by Khanna J. and Krishna Iyer J.— F

KHANNA, J.—The facts of the case have been set out in the judgment of my learned brother Krishna Iyer J. and need not be repeated. G

Two principal contentions have been raised on behalf of the appellant. It is urged in the first instance that the finding that the appellant was in possession of the gold bars with foreign markings recovered from his shop and of indigenous gold recovered from his residential premises cannot be sustained. In this respect I find that the trial court and the High Court on consideration of the evidence brought on record have arrived at the conclusion that the appellant was in possession of the gold bars and indigenous gold in question. Nothing cogent has been brought to our notice as may justify interference with this concurrent finding of fact based upon appreciation of evidence. I, therefore reject the first contention. H

A Equally devoid of force is the second contention that the Customs Officer cannot under section 107 of the Customs Act, 1962 examine any person who is subsequently arraigned as an accused in respect of the possession of smuggled gold. According to clause (b) of section 107, any officer of customs empowered in this behalf by general or special order of the Collector of Customs may, during the course of B any enquiry in connection with the smuggling of any goods, examine any person acquainted with the facts and circumstances of the case. There is nothing in the language of section 107 to indicate that the words "any person" do not include a person who is subsequently arraigned as an accused. The language of section 107 is clear and unambiguous and I find it difficult to place a restricted meaning on the words "any person" and to exclude from their ambit persons who may C subsequently be put up for trial. The examination contemplated by clause (b) is of a person acquainted with the facts and circumstances of a case. Where a person is found in possession of smuggled gold he would obviously be a person who can be considered to be acquainted with the facts and circumstances of the case. In most of the cases he would indeed be the best person to throw light with regard to the smuggled gold found in his possession. D I have not been able to discern any valid reason for excluding the examination of such a person from the purview of section 107 of the Customs Act.

There is no sufficient ground for interference with the sentence. The appeal fails and is dismissed.

E KRISHNA IYER, J.—A white collar crime committed and detected in January 1965 took a demoralisingly leisurely course spread over 3 years in the trial court although only 21 witnesses were examined and the case was simple and supported by a nearly clinching statement of the only accused recorded fresh after the detection, the very day.

F An important component of fair trial is speedy hearing, and the deterrence of judicial punishment is diluted to the prejudice of public justice if, through dilatory hearings and ineffectual revisions, unfortunate delays, such as mar this case, corrode the system and put the courts on trial before the community.

The criminal story here is short and the evidence adduced straight. G The findings of fact are concurrent and the points of law fragile. The case has reached the Supreme Court on a certificate of fitness granted by the High Court.

One Shri Soni, the appellant herein, was engagged in bullion business, perhaps of a dubious character, because he appears to have attracted the attention of the customs authorities, who, undaunted by H failure in one raid kept, track of the dealer. Several months before the episode which materialised in the present case a fruitless search of the flat of Shri Soni had been made. But on May 10, 1965 better luck smiled on P.W. 1, a preventive officer of the Department, thanks to

timely and accurate intelligence received, pursuant to which the officer, to the due accompaniment of the formalities of the law, moved into 59, Manohar Das Street, Calcutta, where the jewellery shop of the accused was located. Armed with the authorization for search, P.W. 1 surprised the accused who was reclining on a pillow, laid on a mattress, underneath which slept two gold bars with foreign markings. P.W. 1, with unerring precision asked the accused to rise in his seat and the truth was out because the guilty gold bars, buried beneath the innocent pillows and mattress, revealed themselves and were promptly seized in the presence of independent witnesses, according to the prescriptions of the law. The search list (Ex. 2) sets out the transaction of recovery. There is evidence to show that the shop was of the accused. The search and seizure, the presence of the accused in the premises, the preparation of the search mahazar and the foreign origin of the gold bars as betrayed by the tell-tale 9990 mark, are not disputed before us.

The next target of the customs authorities was the residential flat of the accused. P.W. 3, a preventive officer of Calcutta Customs, with the usual retinue of search witnesses, entered the house of the accused and there met Mrs. Soni, who contacted her husband on the telephone. Thereupon, the accused arrived, handed over the key of the almirah from which a gold bar of indigenous origin (Mat. Ex. 11) was recovered. These circumstances also are virtually admitted. Later in the day, the same afternoon, the accused was taken to the Customs House for interrogation. What that examination yielded was recorded in Ex. 7. Close upon the search and caught almost red-handed, the accused, with little opportunity to invent and left to fall back upon his unnerved imagination, made a clumsy escapist statement which contains damaging implications.

The complaint based on these facts led to a charge under Rule 126 I(10) of the Defence of India Rules, 1962 read with Rule 126 P(2)(ii) of the said Rules as also one under Rule 126 I(1) read with Rule 126 P(1)(i). Since a contravention of s. 135(b) of the Customs Act, 1962, was also *prima facie* made out a charge thereunder was framed. The case ended in conviction before the Magistrate, but in appeal there was acquittal on one charge, but the sentence was sustained on the other charges, the net benefit to the accused being the elimination of a flea-bite fine of Rs. 1000/-. The courts below concurrently relied upon the statement under s. 107 of the Customs Act recorded from the accused (Ex. 9) and considerable argument turned on it in this Court.

Finding Ex. 9 a fatuous exercise in exculpation but containing some vital facts of incrimination, Shri D. Mukherjea, learned counsel for the appellant, inevitably but ingenuously staked a long argument on the unreliability of material elicited under environs of testimonial pressure and personal duress and the inadmissibility of quasi-confessions elicited from *de facto* detainees by investigating officers who exercised powers substantially similar to those of police officers from Customs House premises. Confronted by the direct rulings on the point

and has been properly done. There is other evidence also which justifies the conclusions of facts arrived at in the judgment under appeal. The shop from where the gold was got belongs to the accused's business and there is evidence for it. The bars themselves bear on their bosom evidence of smuggled source in the shape of foregin markings. The circumstances of the recovery not merely deepen the suspicion but clinch the conclusion. The guiltless pillows on which the appellant confidently sat, hid the offending gold and the pre-knowing officers uncovered the contraband with a sure instinct and these facts overpower the case of licit possession feigned by the accused. The disingenous explanation regarding the domestic discovery of gold also is hardly plausible. We affirm the findings of fact.

Appellant's counsel put forward two legal points before he wound up with the submission for a merciful sentence. According to him s. 107 of the Customs Act does not apply to examination of the delinquent but only to other witnesses emergently to be questioned. This, if valid, will exclude Ex. 9 statement, he argues. Substantively, he contends that r. 126 P(2)(ii) of the Defence of India Rules, 1962, cannot apply to smuggled gold, consistently with the High Court's view that Rule 126 I relating to declaration of non-ornament gold does not cover smuggled gold. To appreciate this part of the argument, we must have a broad understanding of the scheme of Chapter 14-A of the Defence of India Rules which in 1965, when the alleged offence was committed, regulated the possession, use and sale of gold. (Now these functions are performed by the Gold Control Act). The procedural provisions of the Customs Act also come into play in this case and the contention regarding s. 107 of that Act, under which Ex. 9 statement was recorded, needs some attention in the background of Chapter 13 of the Customs Act itself. Since after careful consideration we find no substance in any of these points, our survey of the statutory schemes need not be elaborate.

For long years the national economy has been under great stress and strain and gold racket on any considerable scale particularly during the dangerous years around 1965, was fraught with crippling consequences. And so the Defence of India Rules, in Part XII A, insisted on severe 'gold' discipline. Rule 126 I direct everyone, other than a licensed refiner and licensed or licensable dealer, to make a declaration of all non-ornament gold owned by him. Such persons shall not in future acquire any such gold without permit or save as provided in sub-rule (3). Many other restraints on acquisition and possession exist. There are many regulations and prohibitions with which we are not concerned here. Dealers have to make returns of gold in their possession to the concerned authority (Rule 126F). They have also to keep account of gold bought and sold (R 126G). Except as laid down in Rule 126H dealers are prohibited from being in possession of gold. Indeed even a person, other than a dealer, shall not acquire non-ornament gold except as indicated in Rule 126 H(2)(d). Certain rebuttable presumptions also are statutorily raised (vide Rule 126 I(11) ) and large powers of search and seizure vested in officers to make this restriction effective (Rule 126L). Rule 126P

and has been properly done. There is other evidence also which justifies the conclusions of facts arrived at in the judgment under appeal. The shop from where the gold was got belongs to the accused's business and there is evidence for it. The bars themselves bear on their bosom evidence of smuggled source in the shape of foregin markings. The circumstances of the recovery not merely deepen the suspicion but clinch the conclusion. The guiltless pillows on which the appellant confidently sat, hid the offending gold and the pre-knowing officers uncovered the contraband with a sure instinct and these facts overpower the case of licit possession feigned by the accused. The disingenous explanation regarding the domestic discovery of gold also is hardly plausible. We affirm the findings of fact.

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A creates penalities for many acts and ommissions, *inter alia* for failure to make a declaration as laid down in Rule 126 I. The High Court has taken the view that the obligation to declare does not cover smuggled gold. Even so, Rule 126 P(2)(ii) penalises a person who has in his possession or under his control any quantity of gold in contravention of any provision of this Part. We cannot cut back on the width of the language used, bearing in mind the purpose of plenary control
B the State wanted to impose on gold, and exempt smuggled gold from the expression 'any quantity of gold' in that sub-rule. That construction will stultify the law. There is no manner of doubt that the accused was in control of the indigenous gold recovered from his residence and there is no case that a declaration has been made regarding it. That at least this domestic gold was subject to the declaration of Rule 126 P(2)(ii) can be spelt out without straining language. Its
C possession is clearly an offence, as held by the courts below.

But proof of this depends in good measure on the statement given by the appellant to the Customs Officers the same day under s. 107 of the Customs Act. This provision is wide in its terms and is clearly designed to facilitate the investigatory process by examination without
D restriction on person, place or time. Lest it should be misused the law is choosy and requires the empowerment of customs officers by general or special order of the Collector to exercise these larger powers. Does s. 107 enable the interrogation of even the potential delinquent or must it be confined only to witness who throw light on the delinquent's contravention of the law 'Any person' in the section certainly covers every person including a suspect and potential accused. These words
E of the statute have to be interpreted in the light of the policy and purpose of the law. The object of s. 107, located in the neighbourhood of s. 108, indicates that while the normal process of enquiry is facilitated by s. 108, investigatory emergencies are taken care of by s. 107. May be situations arise where the failure to question a witness quickly may mean irretrivable loss of a valuable material and s. 107 meets this need. The context in which the words "any person" occur,
F the object of the provision and the policy underlying Ch. XIII of the Customs Act assume relevance and become material in the construction of the text. Nor are we faced with any difficulty on account of art. 20(3) of the Constitution since the examination is not of an accused person. Nor is there any warrant for saying that the section excludes, as a legal limitation, the Customs House as a venue for such examination. 'Any place' in the section obviously means any place and a con-
G trary view is so untenable that counsel did not seriously urge it. Indeed, often times it is more convenient for all concerned to move to the quiet and convenience of an office for recording statements. A businessman may be wantonly humiliated if he is arrested and kept in the bazaar and interrogated at length in the presence of a crowd which is sure to collect. The provision is plain that an authorised Customs official is entitled to examine any person at any time, at any place, in the course
H of an enquiry. Whether the statement was extracted by threat of harm, hope of advantage or improper inducement does not concern us as no such case is made out. Ex. 9 has been found by the High Court to be free from taint. We are not disposed to differ.

On the proved facts the gold bar is caught in the criminal coils of s. 135, read with ss. 111 and 123, Customs Act, as the High Court has found and little has been made out before us to hold to the contrary.

Guilt being established, the fifth act of the tragedy is reached. Social and economic offences stand on a graver footing in respect of punishment. The appellant's advocate pleads in elimination of the imprisonment that gold of considerable value has been confiscated, that his client has gone out of business (his licence having been cancelled) and the possibility of further mischief is absent, seven years of criminal proceedings have been a long ordeal deterrent enough to inhibit future anti-social adventures, and some jail term he has already undergone. Counsel submits that his client will now turn a new leaf if he is not returned to prison. We decline to be moved by this dubious prospect.

The new horizons in penal treatment with hopeful hues of correction and rehabilitation are statutorily embodied in India in some special enactments; but crimes professionally committed by deceptively respectable members of the community by inflicting severe trauma on the health and wealth of the nation—and the members of this neo-criminal tribe are rapidly escalating—from a deterrent exemption to humane softness in sentencing.

The penal strategy must be informed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers hoarders, adulterators and others of their ilk have been busy in their under-world because the legal hardware has not been able to halt the invisible economic aggressor inside. The ineffectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judges' conscience. While we agree that penal treatment should be tailored to the individual, in the extreme category of professional economic offenders, incarceration is peculiarly potent. When all is said and done, the offences for which the appellant has been convicted are typical of respectable racketeers who, tempted by the heavy pay-off face the perils of the law and hope that they could smuggle on a large scale and even if struck by the court they could get away with a light blow.

Mr. Justice Abhyankar observed in a Bombay case (*State* v. *Drupadi*[1]) under s. 5, Imports and Exports Control Act :—

> A serious view must therefore be taken of such offences which show a distressingly growing tendency. The argument that the accused comes from a respectable or high family rather emphasise the seriousness of the malady. If members belonging to high status in life should show scant regard for the laws of this country which are for public good, for protecting our foreign trade or exchange position of currency

(1) A.I.R. 1965 Bom. 6, para 11.

A difficulties, the consequential punishment for the violation of such laws must be equally deterrent. The offences against Export and Import restrictions and customs are of the species of 'economic' crimes which must be curbed effectively."

We endorse this approach. It may not be out of place to notice in this context the observations of the Central Law Commission(1) B against light sentences on the score that; (i) the case is one of first conviction; (ii) that the matter has been already dealt with by severe departmental penalty; (iii) that the convicted person is a young man. To the extent to which gold smugglers and other anti-social operators in the field of crime can be given an unhappy holiday in jail, the courts must help the process on conviction, if judicial institutions are not to be cynically viewed by the community. We confirm the sentence. The appeal fails and is dismissed.

P.B.R. *Appeal dismissed.*

(1) Forty-seventh Report on "The Trial and Punishment of Social and Economic Offences".