



2025:DHC:4584



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 28th May, 2025**

+ **CRL.A. 192/2012**

AIR CUSTOMS

IGI Airport,
New Delhi

.....Petitioner

Through: Mr. Satish Aggarwala, Sr. Standing
Counsel.

Versus

RAM CHANDER

S/o Shri Sultan Singh
R/o FRRO Lane, Safdarjung Barrack,
New Delhi

....Respondent

Through: Mr. S.K. Srivastava, Ms. Shubhi
Srivastava, Mr. Prince Kumar & Ms.
Garima Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under Section 378(iv) of the Cr.P.C has been filed by the Appellant/ AIR Customs against the Judgment dated 11.07.2006 of learned ACMM, Delhi, *vide* which the Respondent has been acquitted for the offence under Section 135(1) (a) of Customs Act.

2. ***The case of the Prosecution*** is that 24 gold biscuits were recovered from the Arrival Immigration Hall of IGI Airport on 20.01.1994. These gold biscuits were found lying below the wash-basin in the toilet for



handicapped and were wrapped in brown plastic adhesive tapes. The Officers, acting on specific information reached the spot and the Respondent, who was posted as Constable, Delhi Police, was found standing there. On seeing the Officers, as he tried to flee and hit into Mr. Duli Chand, Customs Head Constable. The Respondent was over powered by the Officers of the Petitioner Department.

3. The gold biscuits were found to bear Swiss markings and weighed 2.819 Kgs. The search of the person of the Respondent resulted in recovery of a cloth belt which had been tied to his waist under his trousers. The belt had a pocket stitched to it, which was intended to be used for concealing the gold biscuits. The incriminating articles were seized.

4. The Respondent in his Statement under *Section 108 Customs Act, 1962* admitted the recovery and seizure of gold biscuits. He deposed that he was to pick up these gold biscuits and deliver them to one Bhagirath, who was waiting outside. When the Respondent was taken to the parking for identification of Bhagirath, neither Bhagirath nor his Agent or vehicle was traced. The Respondent did not retract his Statement under Section 108 Customs Act at the first available opportunity and it remained free from blemish and has a presumption of being truthful and correct.

5. The Petitioner Department examined nine witnesses in all. ***PW4/Smt. Sudesh*** was the sweeper who had found the Respondent standing outside the toilet, but she failed to support the case of the Prosecution and was declared hostile. Likewise, ***PW8/Mohinder Singh*** and ***PW9/Ram Chander, the two panch witnesses, deposed*** that their signatures were obtained on pre-written documents. They were also declared hostile and were cross-examined by the Prosecution.



6. ***PW1/Shri D.B.R. Nagpal*** was the Complainant who proved the Sanction and Authorization as Ex.PW1/A and Ex.PW1/B. ***PW2 S.A. Siddiqui*** was the witness to search, recovery and seizure who supported the case of the Prosecution. ***PW3/Shri Anil Khanna*** deposed that the Statement of Respondent was made by him voluntarily and not under any coercion. ***PW5/Smt. Sudershan Marwah*** deposed that Statement of Smt. Sudesh was recorded in her presence. ***PW6/Shri Vimal Kumar*** was the jeweller, who gave the Purity Certificate Ex.PW2/B. ***PW7/Duli Chand*** was the person to whom the Respondent struck while making an attempt to escape.

7. The ***Statement of the Respondent was recorded under Section 313 Cr.P.C.*** wherein he denied his involvement in the case. According to him, he got embroiled in a fight ensuing between the ***Smt. Sudesh***, the Sweeper and a lady who wanted to use the toilet. Because of his intervention, he has been implicated falsely in the present case.

8. The Respondent examined ***Shri N.K. Sinha***, Assistant in R.A. Unit, Deptt. Of Revenue, Ministry of Finance, New Delhi, who deposed that Respondent had been exonerated in Departmental proceedings.

9. **The learned ACMM vide his Judgment dated 11.07.2006 acquitted the Respondent.**

10. The Judgment of acquittal ***is challenged by the Appellant Department on the ground*** that the Statement of the Respondent under Section 108 Customs Act was admissible in evidence and the conviction could have been based on his statement. Furthermore, the factum of recovery, seizure, *panchnama* signed by the Respondent and the testimony of other *panch* witnesses, fully established the case of the Prosecution.



11. Reliance has been placed on C.E. vs. Duncan Agro Industries Ltd. AIR 2000 SC 2001, wherein it was observed that the Statement under Section 108 Customs Act, without complying with Section 164 Cr.P.C is admissible in evidence.

12. Reliance is also placed on Strino Juen Antanio vs. Customs 2000 (2) JCC (Delhi) 349; K.I. Pavunny vs. Asstt. Collector (1997) 3 SCC 721, wherein it was observed that confessional statement recorded by reason of statutory compulsion or given voluntarily by the accused person pursuant to his appearance against summons or on surrender cannot be said to have been obtained by inducement of promise.

13. Similar observations have been made in M. Prabhulal vs. Assistant Director, DRI (2003) 8 SCC 449; Ravinder Singh @ Bittu vs. State of Maharashtra 2002 (2) JCC 1059 (SC); A.K. Mahboob vs. IO, NCB JT 2001 (1) SC 614; Pon Adithan vs. Deputy Director, NCB, Madras 1999(2) JCC (SC) 335; Kalema Tumba vs. State of Maharashtra JT 1999 (8) SC 293; F. Mario Pires vs. Directorate of Enforcement, New Delhi, 1982 Cr.L.J. 461 Goa and Triveni Prasad vs. State of Maharashtra AIR 1976 SC 2156.

14. It is further submitted that retraction of the Statement by the Respondent was not sufficient for it to be not admitted in evidence. Reliance has been placed on Surjeet Singh vs. UOI AIR 1997 SC 256; K.T.M.S. Mohd. & Anr. vs. UOI 1992 SCC (Cr.) 572; Shankaria vs. State of Rajasthan AIR 1978 Supreme Court 1248; Ruiz Guerrero Dolores vs. Customs, 2000 (2) JCC (Delhi) 357; Hem Raj Devi Lal vs. State of Ajmer, AIR 1954 SC 462 (SC).

15. Furthermore, in addition to the Statement under Section 108 Customs Act, there was other evidence of official witnesses who had no reason to



implicate the Respondent falsely and whose testimony was trustworthy as they were disinterested witnesses. Statutory presumption of correctness of official acts was in their favour. Reliance is placed on Chander Bhan Ram Chand vs. State 1971 Cr.L.J 197 (Punjab & Haryana High Court); State of Haryana vs. Manoj Kumar Crimes 1994 (1) 103; T. Shankar Prasad vs. State of Andhra Pradesh CrI. Appeal No.909 of 1997; S. Jeevanantham vs. The State 2004 JCC 1048 and Delias Chritopher vs. Customs 2004(3) JCC 147.

16. It is submitted that learned ACMM committed grave error in relying on the observations made by Joint Secretary, Department of Revenue, Ministry of Finance in his Order in adjudication proceedings, for which reliance has been placed on the case of Standard Chartered Bank & Ors. vs. Directorate of Enforcement & Ors. 11 (2006) BC 392.

17. It is further contended that there is no material on the file to hold that the statements were involuntary. There is no legal evidence of any dispute in pursuance of which case under Section 186/353 IPC should have been registered. It is immaterial the independent witnesses did not support the case of the Prosecution. There was sufficient evidence on record de hors the private witnesses, to establish the commission of the offence beyond reasonable doubt. Reliance has been placed on Krishna Mochi & Ors. vs. State of Bihar & Ors. 2002 (2) CC Cases (SC) 58; Inter Singh & Anr. Vs. State (Delhi Administration) AIR 1978 SC 1091 and Nallabothu Venkaiah vs. State of Andhra Pradesh 2002(3) JCC 1582.

18. It is, therefore, submitted that the impugned judgment of acquittal be set aside and the Respondent be punished in accordance with law.



19. The *Appellant in his written synopsis and oral submissions* has essentially argued on the same aspects, whereby it is asserted that allegedly the retraction was of no consequence. The *Panch* witnesses and PW6 Vimal Kumar established beyond reasonable doubt that the recovery made from the Respondent was of gold. The gold was a prohibited item as has been held in the case of *Nidhi Kapoor vs. Principal Commissioner and Additional Secretary to the Government of India* W.P (C) No.8902/2021 decided on 21.08.2023 and *Om Prakash Bhatia vs. Commissioner of Customs, Delhi* 2003 (155) ELT 423 (SC).

20. It is further contended that *no Sanction under Section 197 Cr.P.C was required* as the act of smuggling gold is not an act in discharge of official duties. It is further submitted that minor discrepancies and contradictions could not have been given over emphasis to give the benefit to the Respondent.

21. It is, therefore, submitted that the Appellant was able to prove their case beyond reasonable doubt and no benefit could have been extended to the Respondent.

22. **The Learned Counsel on behalf of the Respondent has** sought to argue that the present Appeal is not maintainable, as an appeal cannot be preferred merely because it is not to the liking of the litigant.

23. He has argued that the when the Respondent has been exonerated in the Departmental Enquiry itself, the criminal trial on the same evidence and testimony of same witnesses is not maintainable, for which reliance has been placed on *Ashoo Surendra Nath Tiwari vs. The Deputy Supdt. of Police, EOW, CBI & Anr.*, (2020) 9 SCC 636. The Respondent has been found to



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not have committed any offence under the Customs Act 1962 by the Central Govt. *vide* Order dated 26.06.2008.

24. It is submitted that the Appeal could only be filed by the Central Govt. which alone is the authority to direct filing of appeal as mandatory u/s 378(2) of Cr.P.C. 1973. This permission was not taken deliberately as that would have been contrary to the Orders dated 22.06.2008. Furthermore, there is no appeal provided under Chapter XVI of The Customs Act, 1962 against acquittal u/s 135 of that Act.

25. On merits, the Learned Counsel has sought to argue that the case is perverse as no imported gold was seized, nor seizure was proved. There was no recovery made from Respondent, and no eye-witness has testified against the Respondent.

26. Furthermore, Section 108 of The Customs Act, 1962 could not be pressed against accused as the recovery was made from some other place (washroom), and there is no panch witness of seizure, and also no independent witness for seizure of the cloth bag.

27. It is further argued that the Respondent was arrested on the morning of 20.01.1994 by Customs Officers and was kept in custody through the day. It is in the evening that he was forced to sign the pre-prepared statement wherein it was stated that it was his statement u/s 108 of the Act, 1962 & he had pleaded guilty voluntarily as he had attempted to smuggle contraband gold out of Customs Airport when that was absolutely false, wrong & incorrect as he admitted nothing & denied all the allegations of Customs Officers including physically assault on them after his release from continued COFEPOSA detention he had retracted his alleged voluntary statement u/s 108 of the Act, 1962 which in any case could not have been



recorded in view of law laid down in *State of Bombay vs. Kathi Kalu Oghad & Ors.*, (1961) AIR SC 1808.

28. Thus, it is prayed that the Appeal be dismissed.

29. ***Submissions heard and Record perused.***

30. A Complaint under Section 135 (1)(a) of the Customs Act was filed on behalf of the Department through Shri D.B.R. Nagpal against the Respondent.

31. The ***brief facts*** are that on 20.01.1994, acting on specific information, the Prevention Officers of Air Customs reached the left side of Arrival Immigration Hall, where the toilet for Handicapped persons was situated. They spotted one packet, wrapped with brown plastic adhesive tape lying under the wash-basin. The Respondent, a Delhi Police constable was also found standing there. Two witnesses were called. Suddenly, the Respondent started resisting and tried to run away. In the process, he gave beatings to Shri Duli Chand, a Customs Hawaldar on duty. However, he was overpowered by the Customs Officers and was escorted along with the witnesses and the packet, suspected to contain some metal to Counter No.15 inside the Arrival Hall.

32. The packet on weighing was found to be 2.819 Kg. Thereafter the Respondent and the witnesses along with the packet were taken to Preventive room, situated in Arrival Hall, where personal search of the Respondent was conducted, wherein one cloth belt with bleached white cloth packet stitched over it, which was tied over the waist, under the pant was recovered from the Respondent. On questioning, he admitted that the packet was to be handed over to a person Bhagirath outside the Departure Hall.



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33. The packet on examination was found to contain 24 pieces of biscuits of yellow metal with foreign markings. A certified Goldsmith was called who tested the purity of the gold biscuits and opined them to be of 24 cts purity and valued it at Rs.13,02,000/- collectively. The gold biscuits and the cloth belt with pocket stitched over it, the Identity Car, PIC Card and name plate of the Respondent were accordingly, seized.

34. The Respondent in his voluntary statement under Section 108 Customs Act recorded on 20.01.1994 admitted the recovery and seizure of aforesaid gold biscuits and stated that he was to pick up the recovered gold from the Toilet and deliver it to one Bhagirath, who was on duty on 20.01.1994. He further explained that he had met Bhagirath of Fatehpur; Sikar (Rajasthan) about 15-20 days back Bhagirath was importing silver through passengers. He had gone along with him on his vehicle to Jhunjhunu 3-4 times. On 18.01.1994, Bhagirath told him that he would bring 5 Kgs. Gold through one Surjit Singh, which he should attempt to take out, otherwise, he would clear it by making payment of customs duty. He promised the Respondent Rs.30,000/- for this job.

35. The Respondent further stated that on 20.01.1994 at around 08:50 A.M., Bhagirath came to Departure and sent a chit through some sweeper for him. He went out to seek him and Bhagirath told him that one Surjit Singh wearing a black cap, would keep the goods in the toilet and that he should pick them up from there. He also handed over one cloth belt with pocket stitched over it to keep the goods. He tied the belt to his waist.

36. At around 10:30/10:45 hours, he identified the person wearing black cap as Surjit in the left side Immigration Counter and confirmed his name as Surjit Kumar and asked about the gold. He was told that the gold has been



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kept in the toilet. He went inside the Handicap toilet and saw a bag lying below the wash-basin. The lady Sweeper was present there and obstructed his entry into the toilet, but he pushed her and went inside and picked up the bag, which he put inside the pocket and whatever the currency or dollars came out from his pocket at that point of time, were handed over to the lady and he left for Departure through the staircase. He explained that he was having Rs.200/- and six US dollars, which he had found lying in the toilet when he picked up the packet.

37. Outside the Departure Hall, he met Shri Bhagirath and handed over the bag, which he had brought by concealing it under his pant. Bhagirath told him that he was going down stairs and will come back. Bhagirath came back within five minutes and told him that the goods were short. The Respondent told Bhagirath that the remaining gold might be there and that a lady was there and because of whom he had to come back. Bhagirath offered Rs.10,000/- to Rs.20,000/- more to him to bring back the gold.

38. The Respondent came back and told the lady about the gold packet which was left there, but she told him that there was nothing. He told her to check inside for which he kept on pushing her, but she did not allow him and turned down his requests. At that time, Customs Officers reached there and started an enquiry from him. He called two witnesses and took into possession the packet, which was lying below the wash-basin. He tried to run away from the spot and had a scuffle with Hawaldar. He along with the witnesses and customs Officers came to Counter No.15, where the packet was weighted as 2.819 Kg gross and he was taken to the side room of the Customs Hall and his personal search was conducted.



39. He tried to run away but was over powered and taken to the Departure and in the Parking Area for identification of Bhagirath, his men and vehicle No.DBC 9238/9248, but neither Bhagirath nor the passenger or the vehicle could be found. The packet was opened and examined by the goldsmith and was found to contain gold biscuits which were seized.

40. ***The Charges under Section 135 (1)(a) of the Customs Act was framed on 16.04.2001 to which he pleaded not guilty.***

41. According to the Prosecution, the first person to have noticed the Respondent near the Handicap Persons Toilet was PW4 Smt. Sudesh, whose testimony is of prime importance. She deposed that on the morning of 20.01.1994, she was on duty to take care of the Handicap toilet and around 10:30 A.M when there were number of persons in the Immigration Hall, she went inside the toilet. When she came out, she did not see anyone coming out from the Handicap Toilet. Since she did not meet any person, there was no question of her putting any question to him. ***The witness was cross-examined by the Prosecution.*** In her cross-examination she stated that she was made to sign the statement Ex.PW3/B. She admitted that she called the Manager and informed him that something is lying in the Handicap's Toilet. The Manager called the Customs Officers, who took possession of the Article lying there in regard to which, he signed the statement, Ex.PW3/2.

42. ***PW4 - Smt. Sudesh,*** however, denied that she saw any person coming out of the Toilet meant for handicap persons. She also denied that she had questioned him the reason to enter the toilet which was meant for handicap. She also denied that she found the toilet dirty or questioned the person that as to why he had not pulled the flush chain. She denied that he wanted to



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shut the door, which she did not permit. She also denied that he shut the door and went away. She, however, admitted that she had noticed the packet under the wash-basin, but she stated that she did not see the person and could not say if he was wearing a khaki coloured cap or that he was wearing a jacket or pant of khaki colour. She denied that the said person had tried to go inside the toilet and she had prevented him from doing so as it was meant for Handicap. She further denied that she did not permit the person to pick up the bag lying in the toilet for handicap, but he concealed it in the front portion of the pants worn by him. She further denied that she tried to resist, but in the mean while the packet fell and he ran away to the Departure Hall or that before leaving, he left some money which she after picked up and produced before the Superintendent, Customs. She denied that a person in brown sweater, had asked her to let him take the packet and that she should accompany him for which he would give the money. She further denied that the person who was wearing brown sweater, who had come earlier to remove the brown bag, had again tried to run away and there was a scuffle with the Customs Officers.

43. **PW4 Smt. Sudesh** admitted her signatures on the *Panchnama* Ex.PW2/A, but denied its contents. She also denied that she had identified said person in the presence of the Customs Officers. She also failed to identify the Respondent as the same person who had been identified by her in the *Panchnama* Ex.PW2/A or who is referred to in Ex.PW5/B.

44. In her cross-examination on behalf of the Respondent, she further deposed that she was illiterate and only knows how to put the signatures. When she was called to sign Ex.PW5A and ExPW3/B, these documents



were already written and she was made to sign them without being told about their content.

45. The entire case of the Prosecution was that while the Respondent was making an endeavour to take the packet from the toilet for handicap persons, he was apprehended. It is pertinent to observe that PW43/Smt. Sudesh who is the most important witness, had denied that Respondent had earlier visited the Handicap Toilet or that on his second trip, he was able to put the packet in his belt which he was wearing under his pants, but the packet fell and was seized by the Custom Officers. She has denied the presence of the Respondent near the Toilet or that he had made an endeavour to take away the brown packet. Though she has been consistent in deposing that a brown packet was recovered by the Custom Officers from under the wash-basin which was seized and in respect of which *Panchnama* was prepared, but her testimony totally exculpates the Respondent about having entered the Toilet or having picked up the Packet or that it fell which was recovered by the Customs Officers.

46. The testimony of PW3, therefore, establishes the recovery of the packet from under the wash basin, but does not implicate the Respondent in any manner. Rather, her testimony establishes that the respondent was making an endeavour to enter the Toilet but was prevented by her.

47. Likewise, the witness of the Department was **PW2/S.A. Siddiqui, ACO, IGI Airport, New Delhi**. He deposed that on 20.01.1994, he along with other Officers of Preventive Customs reached the left side of the Arrival Immigration Hall, where the Toilet for Handicapped was situated. He spotted one packet which was wrapped with brown plastic adhesive tape, lying below the wash-basin and the accused was found standing there. He



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called two witnesses. The Respondent tried to run away, but he was overpowered and was caught by the Customs Officers and was escorted along with the witnesses and the aforesaid packet, to Counter No.15. He further deposed that on opening of the packet, recovery of 24 gold biscuits with swiss markings was recovered. The goldsmith certified it to be 24 Cts. gold. The gold was seized in a tin container. The *Panchnama* was drawn which is Ex.PW2/A and bears his signatures, two witnesses and of the Respondent. The copy of the *Panchnama* was given to the Respondent. The Purity Certificate given by the Goldsmith is Ex.PW2/B.

48. Pertinently, according to this witness, the Packet was recovered from under the Wash Basin. If it had been picked up by the Respondent as the Prosecution has tried to claim, then definitely it could not have been lying under the wash basin.

49. The other significant evidence on which reliance has been placed by the Appellant, Customs is the Statement under **Section 108 Customs Act** that was made by the Respondent, wherein he admitted the recovery and seizure of the gold. He further stated that he had to pick up the recovered gold and to deliver it to one Bhagirath, but when he was taken to the Parking Area, neither Bhagirath nor the vehicle were traced.

50. The truthfulness of the Statement under Section 108 Customs Act made by the Respondent could have been fully tested either by recovery of the vehicle, the number of which was disclosed by the Respondent or by tracing Bhagirath, who was allegedly the master mind behind the smuggling of gold. Clearly, no investigations on this aspect were conducted.

51. Another significant aspect is that **PW8/Sh. Mohinder Singh** and **PW9/Shri Ram Chander** the two independent public/Panch witnesses also



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did not support the case of the prosecution. They also deposed that they had been called by the Custom officers for getting their signatures on some papers, which were already prepared. Pertinently, the two witnesses admitted their signatures on their respective Statements under Section 108 Customs Act, but were consistent in deposing that they were only made to put their signatures on the documents.

52. The learned ACMM has observed that PW4 Smt. Sudesh sweeper PW8 Sh. Mohinder and PW9 Ram Chander were the employees on contract basis who were doing conservative and menial jobs under the Contractor Shri Suresh Raj Thekedar. It was natural that they would have been made to sign the statements prepared by the Custom Officers without knowing their contents, at the instance of the Appellant.

53. Another significant aspect is that **PW6 Shri Vimal Kumar**, goldsmith was called to assess whether the item recovered was gold and its purity. He in his cross-examination stated that he did not test the purity of yellow metal by any scientific examination, but only by *Touch Stone* method. He admitted that in this method, he cannot state with surety what was inside the gold biscuit and the purity was tested only of the surface. He admitted that no test by drilling was conducted by him to ascertain the purity of the gold. He also admitted that prior thereto, he had issued 3-4 Certificates to the Custom Officers as and when he was called by them.

54. The testimony of PW6 creates a serious doubt of the appropriate procedure having been followed to assess that the recovered item was in fact, gold as is claimed by the Appellant. It need not be over emphasized that no Qualification Certificate has been produced to show that he was a qualified Goldsmith, competent to certify the purity of the gold.



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55. The learned ACMM had rightly referred to the observations made by the *Adjudicating Authority in its Order dated 13.06.2001*, while assessing the entire evidence as led herein, to conclude that there was no evidence whatsoever to prove the recovery of the from any of the three persons including the Respondent.

56. The learned ACMM has, therefore, rightly extended the benefit of doubt to the Respondent while acquitting him for the offence under *Section 135(1)(a) of the Customs Act, 1962*.

57. There is no infirmity in the impugned Judgement and the Appeal is hereby, dismissed. Pending Applications are accordingly, disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 28, 2025

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