

A **SACHIDANANDA BENERJI, ASSISTANT COLLECTOR
OF CUSTOMS**

v.

SITARAM AGARWALA AND ANOTHER

B *October 5, 1965*

[K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH, S. M. SIKRI AND
V. RAMASWAMI, JJ.]

Sea Customs Act (8 of 1878), s. 167(81)—Liability of person other than importer—"Concerned in or dealing with goods", meaning of.

C The 1st respondent had gone to the 2nd respondent after previous
arrangement with him, with a large sum of money to purchase gold which
was known to them to be smuggled and to have been imported into India
against the restrictions imposed on the import of gold. The police inter-
vened, recovered the gold and arrested them. The gold was confiscated
under s. 167(8) of the Sea Customs Act, 1878. The respondents were
prosecuted for an offence under s. 167(81) and they were convicted by
D the trial court. On appeal the High Court acquitted the 1st respondent
because it was of the view that as the 1st respondent merely attempted to
purchase the gold it could not be said that he was concerned in dealing
with the smuggled gold within the meaning of the section. The High Court
also acquitted the 2nd respondent because it held that before a person
could be convicted under s. 167(81), it must be shown that he was
either a direct importer or concerned in some way in the import of the
E smuggled article, and that the section did not include in its scope a
person who subsequently obtained the smuggled goods and then dealt with
them, though the smuggled goods themselves might be liable to confis-
cation.

In appeal to this Court,

F HELD (*per* Wanchoo, Shah, Sikri and Ramaswami, JJ.) : (i) The
High Court was in error in holding that simply because the purchase was
not complete the 1st respondent was not concerned in dealing with the
smuggled gold which was with the 2nd respondent. [14 D]

G The words "in any way concerned in or in any manner dealing with
any goods" in the section, are of very wide import. The words "con-
cerned in" mean "interested in, involved in, mixed up with", while the
words "deal with" mean "to have something to do with, to concern one
self, to treat, to make arrangement, to negotiate with respect to some-
thing." Therefore, when a person enters into some kind of transaction
or attempts to enter into some kind of transaction with respect to prohibited
goods, and it is clear that the act was done with some kind of prior
arrangement or agreement, it must be held that such a person is concerned
in dealing with prohibited goods. [13 A-B; H]

H (ii) On the language of the section, it applies not only to an actual
smuggler or a person concerned in smuggling but also to all others who
may be concerned with smuggled goods after the smuggling is over provid-
ed they knew that the goods were smuggled into the country in spite of
a prohibition or restriction, or they knew that the duty thereon had not
been paid. It follows that the 1st respondent had the necessary knowledge
and intent to evade the prohibition or the restriction even though he dealt

with the gold after the smuggling was over and was not in any way concerned with the actual smuggling. He would therefore be guilty under the section. The 2nd respondent was also guilty under the section inasmuch as he was dealing with prohibited or restricted goods and had the necessary knowledge and intent as required under the section. [21 B, C, E]

If the intention of the legislature was that the person guilty under s. 167(81) could only be a person who was concerned in some way or other with the actual importation or exportation it would have been easy for it to use the same words as were used in the first part of s. 167(8) but it has not done so. What s. 167(81) requires is that the person who comes *inter alia* into possession of prohibited goods must know that there is some prohibition in force with respect thereto. But before he is found guilty it has further to be shown that he intends to evade the prohibition. Where the case is not of prohibition but of duty, the person accused under the section must be shown to know that the duty has not been paid and also to have the intention to defraud the government of the duty payable on the goods. So long as the duty is payable and has not been paid or so long as the prohibition or restriction remains in force, any person acquiring possession of goods, on which duty has not been paid or with respect to which the restriction or prohibition has been evaded, would have the intent either to defraud the government of the duty payable, for he acquires goods at a lower price, or would have the intention to evade the restriction or prohibition because no one would take the risk of smuggling unless he can find a purchaser for the smuggled goods. If this were not so, there would be a premium on successful smuggling and the purpose of the section to punish smuggling and stop it if possible, would be completely defeated, as there would be a serious lacuna in the provision. [15 E-G; 17 A-D]

Cases under the English Act referred to.

Per Subba Rao, J. (Dissenting) : It had not been established that the respondents had dealt with the gold with an intention to evade any restriction or prohibition imposed on their import. [7 F]

It is not open to the court to strain the language of a statute in order to read a *causis omissis* and the court cannot fill up a lacuna. Also, the court cannot construe the section with reference to the corresponding English Section and English decisions because, the Indian and English sections are not in *pari materia*. Under s. 167(81) the material ingredients constituting an offence are; (i) a person must have a knowledge that there is a prohibition or restriction against doing any of the enumerated acts with respect to goods imported or exported contrary to the restriction or prohibition imposed against their import or export, and (ii) he must have acted with an intention to evade such a restriction or prohibition. That is, the two elements of *mens rea*, namely, knowledge and intention must be established, because, knowledge of an offence cannot be equated with an intention to commit the offence. The crux of the offence is the import of goods with the requisite intent contrary to the prohibition. The importer who smuggles the goods is certainly guilty under the section because he imports them in derogation of the prohibition or restriction. Also, any person who deals with the goods in the context of the import in any of the connected ways set out in the section, with the requisite knowledge and intention would equally be guilty of the offence, because, the enumerated dealings with the goods prohibited or restricted may be necessary to complete the import *vis-a-vis* the importer, even though they cover a field beyond the point of import as normally understood, that is, when the goods cross the customs barrier. But the intention to contravene the prohibition cannot be imputed to subsequent dealers in

A the goods after the importer parts with them, though the goods themselves can be confiscated in the hands of whomsoever they are found. [4H; 5C, E-F; 6B-C, H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 192 of 1961 and 183 of 1962.

B Appeals from the judgment and orders dated August 11, 1961 of the Calcutta High Court in Criminal Appeals Nos. 360 of 1959 and 345 of 1959 respectively.

WITH

Criminal Appeals Nos. 41 of 1964 and 42 of 1964.

C Appeals by special leave from the judgment and orders dated March 25, 1963 of the Bombay High Court in Criminal Appeals Nos. 1640 of 1962 and 1359 of 1962 respectively.

D *Niren De*, Additional Solicitor-General, *D. R. Prem*, *R. H. Dhebar* and *B. R. G. K. Achar*, for the appellant (in Cr. As. Nos. 192 of 1961 and 183 of 1962).

D. R. Prem, *B. R. G. K. Achar*, *Yogeshwar Prasad*, for appellant (in Cr. As. Nos. 123 of 1962 and 41 and 42 of 1964).

S. C. Mazumdar, for respondent No. 1 (in Cr. A. No. 123 of 1962).

E *P. K. Chatterjee* and *S. P. Varma*, for respondent No. 1 (in Cr. A. No. 123 of 1962).

B. M. Mistry, *P. R. Vakil*, *J. B. Dadachanji*, *O. C. Mathur* and *Ravinder Narain*, for respondent (in Cr. A. No. 41 of 1964).

F *B. R. Agarwala* and *H. K. Puri*, for respondent (in Cr. A. No. 42 of 1964).

P. R. Vakil, *B. M. Mistry*, *J. B. Dadachanji*, for the interveners (in Cr. A. Nos. 41 and 42 of 1964).

G **SUBBA RAO J.** delivered a dissenting Opinion. The Judgment of **WANCHOO SHAH**, **SIKRI** and **RAMASWAMI JJ.** was delivered by **WANCHOO J.**

Subba Rao, J. I regret my inability to agree on the construction of s. 167(81) of the Sea Customs Act, 1878. The facts have been stated by my learned brother, **Wanchoo, J.**, and I need not restate them.

H Clause (81) of s. 167 of the Sea Customs Act reads :

“If any person knowingly, and with intent to defraud the Government of any duty payable thereon, or to

evade any prohibition or restriction for the time being in force under or by virtue of this Act with respect thereto acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid”;.....

A
B

The penalty clause thereof reads : “such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding two years or to fine, or to both”. This clause introduces a criminal offence. It is triable by a Magistrate. The person convicted is liable to imprisonment for a term not exceeding two years or to fine or to both. The rule of construction of such a clause creating a criminal offence is well settled. The following passage from the judgment of the Judicial Committee in *The Gauntlet*⁽¹⁾ may be quoted :

C
D

“No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a *casus omissus* that the thing is so clearly within the mischief that it must have been intended to be included, and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.”

E
F
G

The clause, therefore, must be construed strictly and it is not open to the court to strain the language in order to read a *casus omissus*. The court cannot fill up a lacuna : that is the province

H

(1) (1872) L.R. 4 P.C. 184, 191.

A of the Legislature. The second rule of construction equally well settled is that a court cannot construe a section of a statute with reference to that of another unless the latter is in *pari materia* with the former. It follows that decisions made on a provision of a different statute in India or elsewhere will be of no relevance unless the two statutes are in *pari materia*. Any deviation from
B this rule will destroy the fundamental principle of construction, namely, the duty of a court is to ascertain the expressed intention of the Legislature. I am led to make these general remarks, as an attempt was made by the learned counsel for the appellant to persuade us to interpret the words of the clause in the light of the decisions of the English courts on an analogous provision in
C an Act intended to prevent smuggling. It is not possible to state that the English and the Indian Acts are in *pari materia*, though their general purposes are the same and though there is some resemblance in the terminology used in them. The English decisions, therefore, must be kept aside in construing the relevant provisions of the Indian statute.

D

Now coming to the relevant clause, the following material ingredients constitute an offence thereunder: (1) a person must have a knowledge that there is a prohibition or restriction against doing any of the enumerated acts with respect to goods imported or exported contrary to the restriction or prohibition imposed
E against their import or export; (2) he must have acted with an intention to evade such a restriction or prohibition; there is no offence unless the said two elements of *mens rea*, namely, knowledge and intention, are established. It is not enough if a person has only knowledge of such a prohibition or restriction; in addition he shall have the intention to evade such a prohibition or
F restriction against the import or export of goods, as the case may be. A person who knowingly purchases smuggled goods from an importer cannot have an intention to evade a provision against import, for the prohibited goods have already been imported. A person who receives goods with the knowledge that they are stolen
G goods cannot possibly have an intention to commit theft, for the theft has already been committed, though he may have the intention to receive the stolen goods. Knowledge of an offence cannot be equated with an intention to commit the offence. Such a construction effaces the distinction between the two distinct elements of *mens rea*, knowledge and intention, laid down in the
H clause.

The only possible way out of the inevitable effect of the plain words used in the said clause is to give a meaning to the expres-

sion "import" which that word cannot bear. To accept the argument of the learned counsel for the appellant is to hold that the process of import continues through innumerable transactions between different persons without reference to time or place and whether the goods existed or ceased to exist. Ordinarily the process of import commences the moment the goods cross the customs barrier. That is the meaning given to that word by this Court in *J. V. Gokal & Co. v. Assistant Collector or Sales-Tax*⁽¹⁾. But the said clause gives that expression a wider meaning. The enumerated dealings with the goods prohibited or restricted covered a field beyond the point of import normally understood by that expression. But all the said dealings have an intimate nexus with the import of goods under the Act. Goods may be imported through the machinery provided under the Act; yet, a person may evade the restrictions by fraud or otherwise. Goods may also be illegally imported into India outside the machinery so provided. This is done stealthily at different points of the vast sea line of our country. But in either case different persons may take part in carrying, removing, depositing, harbouring, keeping or concealing or in any other manner dealing with any goods so imported. They are the necessary acts to complete the process of import. Such acts may be done by persons between whom there was a pre-arranged plan before the goods were brought into India. Different persons may also take part in such dealings with the requisite knowledge or intention for the purpose of completing the import *vis-a-vis* the importer. Under the said clause, therefore, the process of import does not end immediately the prohibited goods are brought into India, but continues till the goods are delivered to the importer, physically or constructively. The importer who smuggles the goods is certainly guilty under the clause, because he imports them in derogation of the prohibition or restriction. Any person who deals with the goods in the context of the import as explained above in any one of the connected ways with the requisite knowledge and intention would equally be guilty of the offence. But the subsequent transactions in regard to the said goods are outside the process of the enlarged definition of the expression "import". It would be incongruous to hold that a purchaser from the importer or a purchaser from the said purchaser, and so on, has an intention to evade the prohibition or restriction, though he may have the intention to receive the smuggled goods. How does such a purchaser evade the prohibition against import which has already been affected? The contrary construction will lead to the anomaly of a purchaser,

(1) [1960] 2 S.C.R. 852, 857, 858.

- A even after 20 years of the import, being attributed the intention to evade the prohibition against import. Suppose before the purchase of the goods by a stranger the prohibition was lifted. In such a situation, does the purchaser commit an offence? If the contention is sound, he does. This illustrates that the crux of the offence is the import of goods with the requisite intent contrary to the prohibition. For the said reasons the intention to contravene the prohibition cannot be imputed to subsequent dealers in the said goods after the importer parts with them.

- C It is said that if the construction suggested by the learned counsel for the appellant be not accepted, many a person who purchases smuggled goods will escape punishment. A fair reading of the Act discloses that the Act makes a distinction between a customs offence and a criminal offence. The smuggled goods in the hands of whomsoever they are found can be confiscated and, therefore, the State can always trace the smuggled goods to their ultimate destination. The smuggler and the persons concerned in the smuggling are guilty of both customs and criminal offences. The Legislature, either intentionally or otherwise, has not made the dealings in such goods by persons other than those mentioned in cl. 81 of s. 167 of the Sea Customs Act a criminal offence. When the clause does not bring them in, the court cannot, by construction, bring such a class of persons within the said clause. It is for the Legislature to do so and we are told that it has recently amended the section.

- F I, therefore, agree with the High Court that it has not been established that the respondents have dealt with the goods with an intention to evade any restriction or prohibition imposed on the import of the said goods.

In the result, all the appeals should be dismissed.

- G **Wanchoo, J.** These two appeals on certificates granted by the Calcutta High Court arise out of the same trial of the two respondents for an offence under s. 167 (81) of the Sea Customs Act, No. 8 of 1878, (hereinafter referred to as the Act) and will be dealt with together. The facts are not in dispute and have been found as below.

- H On August 25, 1958, a constable attached to the Detective Department, noticed Sitaram Agarwala respondent and another person at the crossing of Hariram Goenka street and Kalakar street. The constable had certain information with respect to

these persons and decided to follow them. These two persons got into a bus and the constable also boarded the same bus. They got down at the junction of B. K. Pal Avenue and J. M. Avenue and so did the constable. They then went to Narendra Dev Square which is a kind of park. The constable kept watch over them from a distance. After a short time these two men came out of the park and stood on the western foot-path of J. M. Avenue. Shortly thereafter a small taxi came there from the South and stopped. Respondent Wang Chit Khaw (hereinafter referred to as the Chinese accused) was in that taxi. He came down and shook hands with Sitaram Agarwala and the three got into the taxi. When the taxi was about to start, the constable disclosed his identity to the driver and asked him to stop. He also asked the three persons to accompany him to the thana. Thereupon Sitaram Agarwala and the other man who was with him came out of the taxi and tried to run away. The constable caught hold of them and put them in the police wagon which happened to come up just then. The Chinese accused also tried to run away. The constable appealed to the members of the public to help him in securing the Chinese accused and he was secured with the help of two college students and one other youngman. As the Chinese accused was running away he threw away three packets which were picked up. In the meantime Sergeant Mukherjee came there on a motor-cycle from the opposite direction and detained the Chinese accused. The three packets thrown away by him were also handed over by the three youngmen to the Sergeant. Thereafter all the three persons who were arrested were taken to the police station along with the three packets. It was found in the police station that the three packets contained 23 gold bars of about sixteen tolas each with Chinese inscription thereon. On search of the person of Sitaram Agarwala, a sum of Rs. 49,320 in notes of various denomination was found on him. The Customs authorities were informed and took charge of the gold bars. Eventually, the gold bars were confiscated under s. 167(8) of the Act and thereafter the police after investigation prosecuted the two respondents and the third man in respect of the offence under s. 167(81) of the Act.

These facts were held to be proved by the Magistrate so far as the Chinese accused and Sitaram were concerned. He therefore convicted them. The case against the third man was held to be doubtful and he was acquitted. Two convicted persons then filed separate appeals in the High Court. The High Court accepted the findings of fact recorded by the learned Magistrate and came to the conclusion that on the facts proved there was

A no doubt that Sitaram had gone with a large sum of money to meet the Chinese accused in order to purchase the gold bars which had been recovered from the packets thrown away by the Chinese accused.

B The High Court then addressed itself to the question whether on the facts proved the conviction of the two respondents could be sustained in law. The charge against Sitaram Agarwala was that on the date in question and at the time and place which appeared in the evidence he had gone there by previous arrangement to purchase the smuggled gold bars from the Chinese accused and was therefore concerned in dealing with smuggled

C gold and thereby committed an offence under s. 167(81) of the Act. The charge against the Chinese accused was that he had in his possession 23 smuggled gold bars which he wanted to sell to Sitaram Agarwala and another person by previous arrangement and as such he was concerned in dealing with smuggled

D gold and was guilty under s. 167(81) of the Act. So far as Sitaram Agarwala was concerned, the High Court held that by merely going to the park in order to purchase smuggled gold by previous arrangement, it could not be said that Sitaram Agarwala was in any manner dealing with smuggled gold. The High Court was of the view that there was a mere attempt to purchase

E smuggled gold on the part of Sitaram Agarwala, but as the purchase was not completed it could not be said that Sitaram Agarwala was concerned in dealing with the smuggled gold. The High Court therefore ordered the acquittal of Sitaram Agarwala, respondent. As to the Chinese accused, the High Court held that though he was found in possession of smuggled gold, which he

F knew to be such, and had attempted to sell that gold surreptitiously, s. 167(81) required knowledge that the article in question was smuggled and intention to defraud the Government of any duty payable thereon or to evade any prohibition or restriction for the time being in force under or by virtue of the Act. In view of the intent necessary, the High Court was of the view

G that before a person could be convicted under s. 167(81) it must be shown that he was either a direct importer or concerned in some way in the import of the smuggled article. In other words, the High Court thought that the section dealt with goods while they were being smuggled; it did not include in its scope a person who subsequently obtained the smuggled goods and then dealt

H with them, though the smuggled goods themselves might be liable to confiscation when seized. Consequently, the High Court ordered the acquittal of the Chinese accused also. As the inter-

pretation of s. 167(81) was involved, the High Court granted certificates; and that is how the two appeals have come up before us. A

The facts are not in dispute in this case and have been set out above. Thus the question that arises before us is the interpretation of s. 167(81) and two aspects of that section have to be considered. The first aspect is the ambit of the words "in any way concerned in or in any manner dealing with any goods with respect to the importation of which any prohibition or restriction is for the time being in force as aforesaid". The second aspect is with respect to the intent necessary under the section and whether that intent can arise where smuggling is over and smuggled goods are in the possession of persons other than those actually concerned in the smuggling and are then dealt with by them in some manner or other. B
C

We may briefly indicate the scheme of the Act in order to appreciate the purpose behind s. 167(81). The object of the Act is to provide machinery for the collection *inter alia* of import duties and for the prevention of smuggling. With that object customs frontiers are defined, (Ch. I); Customs officers are appointed with certain powers, (Ch. II); ports, wharves, custom-houses, warehouses and boarding and landing-stations are provided for, (Ch. III); prohibitions and restrictions of imports and exports are envisaged, (Ch. IV); levy of and exemption from custom duties and the manner in which it has to be done is provided, (Ch. V); drawbacks, *i.e.*, refunds are provided in certain circumstances, (Ch. VI); arrival and departure of vessels is controlled, (Ch. VII and Ch. VIII); provision is made for the discharge of cargo, (Ch. IX), and clearance of goods for home consumption (Ch. X); provision is also made for warehousing and transshipment, (Chapters XI, XII); provisions are also made for exportation or shipment and re-landing (Ch. XIII); special provisions have been made relating to spirit (Ch. XIV) and coasting trade (Ch. XV). Then comes Ch. XVI dealing with offences and penalties. Offences enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by Customs officers and the penalty for which is imposed by them. These may be compendiously called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is D
E
F
G
H

- A** no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act.

It is necessary for our purpose to set out two provisions of s. 167 which is in Ch. XVI. These are s. 167(8) and 167(81). Section 167 (8) is in these terms :—

B

“167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively :—

C

Offences	Section of this Act to which offence has reference	Penalties
(1)	(2)	(3)
<p>D “(8) If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction; or</p> <p>E Etc. Etc.</p>	<p>18 & 19</p>	<p>such goods shall be liable to confiscation; and</p> <p>any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.”</p>

Section 167(81) with which we are particularly concerned reads thus :

<p>F “(81). If any person knowingly, and with intent to defraud the Government of any duty payable thereon, or to evade any prohibition or restriction for the time being in force under or by virtue of this Act with respect thereto acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or</p> <p>G in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid;</p> <p>H or</p>	<p>General</p>	<p>such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding two years or to fine, or to both;</p> <p style="text-align: right;">”</p>
---	----------------	---

It will be seen that s. 167(8) deals with what we have called customs offences while s. 167(81) deals with criminal offences. It is well-settled by the decisions of this Court that goods which have been imported against the prohibition or restriction imposed under Ch. IV of the Act are liable to confiscation at any time after import and this liability extends even in the hands of third persons who may not have had anything to do with the actual import. So long as it is proved that the goods had been imported against the restrictions imposed under Ch. IV, the goods remain liable to confiscation whenever found even if this is long after the import is over and even if they are in possession of persons who had nothing to do with the actual import. It is also well-settled by the decisions of this Court that the second part of the penalty relating to any person applies only to a person concerned in the importation or exportation of the goods and does not apply to a person found in possession of the smuggled goods who had nothing to do with the importation or exportation thereof: (see *Shivana-
rayan Mahato v. Collector of Central Excise and Land Customs*⁽¹⁾).

The main contention of the respondents which has found favour with the High Court was that s. 167(81) when it deals with persons and subjects them to imprisonment and fine on conviction by a Magistrate is also concerned with persons who are in some way or other actually concerned in the import and has no application to third persons who had nothing to do with the actual import but might have come in possession of smuggled goods even knowingly after they had been smuggled. Before however we consider this contention which has found favour with the High Court we should like to dispose of the other contention which was raised on behalf of Sitaram Agarwala and which also found favour with the High Court. It will be seen that s. 167(81) deals with persons who do certain things with the knowledge and intent therein specified and one such person with whom that provision deals is a person who is in any way concerned in or in any manner dealing with any goods with respect to importation of which any prohibition or restriction is for the time being in force. The High Court has held on the facts in this case that Sitaram Agarwala cannot be said to have been concerned in or in any manner dealing with prohibited goods inasmuch as he was merely negotiating with the Chinese accused for their purpose but the deal had not been concluded. The view which found favour with the High Court thus was that if the deal had been completed, Sitaram Agarwala could be said to have been concerned in dealing with the prohibited goods but as the deal was not completed and he

(1) C.A. 288 of 1964, decided on 14-8-65.

- A was merely attempting to purchase the goods it could not be said that he was in any way concerned in or in any manner dealing with them. We are of opinion that the view taken by the High Court is not correct. The words "in any way concerned in or in any manner dealing with prohibited goods" are of very wide import. It is neither desirable nor necessary to define all manner of connection with the prohibited goods which might come within the meaning of the words "in any way concerned in or in any manner dealing with such goods". It will depend on the facts found in each case whether it can be said that any person was concerned in dealing with such goods. We shall therefore confine ourselves
- B to the facts of the present case and see whether on these facts it can be said that Sitaram was in any way concerned in or in any manner dealing with the goods. Now the evidence which has been accepted by both the courts is that Sitaram had gone with a large sum of money to purchase the gold which was known to be smuggled and to have been imported into India against the
- C restrictions imposed on the import of gold. It has also been proved that Sitaram did so after previous arrangement with the Chinese accused. If the constable who was following Sitaram had not interfered the deal would have gone through and Sitaram would have paid the money and purchased the smuggled gold. This was a case therefore where by means of previous arrangement with a person in possession of a smuggled article, the intending purchaser had gone to purchase it and the deal did not go
- D through only because the police intervened. In such circumstances where by previous agreement or arrangement a person goes to purchase an article which he knows to be smuggled it would in our opinion be a case where such a person must be held to be
- E concerned in dealing with the prohibited goods. Where a person does any overt act in relation to prohibited goods which he knows to be such and the act is done in consequence of a previous arrangement or agreement it would in our opinion be a case where the person doing the act is concerned in dealing with the prohibited goods. In other words any transaction relating to prohibited goods which is done or attempted to be done after some
- F kind of prior arrangement or agreement would in our opinion clearly amount to the person being concerned in dealing with the prohibited goods. Both the words "concerned" and "deal" have a wide connotation. The words "concerned in" mean "interested in, involved in, mixed up with" while the words "deal with" mean "to have something to do with, to concern one-self, to treat, to make arrangement, to negotiate with respect to something". Therefore when a person enters into some kind of transaction or attempts to
- G
- H

enter into some kind of transaction with respect to prohibited goods and it is clear that the act is done with some kind of prior arrangement or agreement, it must be held that such a person is concerned in dealing with prohibited goods. The fact that the act stopped at an attempt to purchase as in the present case when the police intervened does not in any way mean that Sitaram was not concerned in dealing with the smuggled gold. The evidence shows that there must have been a previous arrangement with the Chinese accused to purchase the smuggled gold. Sitaram went to the appointed place and met the Chinese accused surreptitiously and had a large sum of money with him to pay for the gold. He had sat down with the Chinese accused in the taxi and there is no doubt that if the taxi had not been stopped, the transaction for the purchase of the smuggled gold would have gone through. In these circumstances even though Sitaram had not come into actual possession of the smuggled gold before the police intervened, there is no doubt that he was concerned in dealing with prohibited goods. We are therefore of opinion that the High Court was in error in holding simply because the purchase was not complete that Sitaram was not concerned in dealing with the smuggled gold which was found with the Chinese accused. The acquittal of Sitaram on this ground must therefore be set aside.

This brings us to the main question which arises in the present appeal, namely, what is the intent required in a case coming under s. 167(81) and whether such intent can be said to arise at all in a case where the import is complete and the prohibited goods are in the possession of a third person who had nothing to do with the import. For this purpose we shall refer to that part of s. 167(81) which deals with the acquisition of possession of prohibited goods and what we say about that part will equally apply to the other parts of s. 167(81). We may add that we are dealing here with the first half of s. 167(81) and not with the second half. This part of s. 167(81) which we have taken for the purpose of finding out what is the knowledge and intent that s. 167(81) requires would run thus: "If any person knowingly, and with intent to defraud the Government of any duty payable thereon, or to evade any prohibition or restriction for the time being in force under or by virtue of the Act with respect thereto acquires possession of any goods with respect to which duty has not been paid or with respect to the importation of which any prohibition or restriction is for the time being in force." The argument which has found favour with the High Court is that the section requires knowledge on the part of the accused

- A that the goods were imported against the prohibition or restriction in force. This is undoubtedly so. The section further requires that the person who has this knowledge should also have the intention either to defraud the Government of any duty payable thereon or to evade any prohibition or restriction for the time being in force under or by virtue of the Act. Mere knowledge that the goods are prohibited goods or goods on which duty has not been paid would not be enough; the section further requires that there should be an intent to defraud the Government of the duty payable or to evade any prohibition or restriction. The argument on behalf of the respondents which has been accepted by the High Court is that once the goods have evaded the payment of duty or have evaded the prohibition or restriction with respect to their import and the smuggling whether of dutiable or prohibited goods is complete, a third person who comes into possession of such goods thereafter and who had nothing to do with the smuggling itself cannot be said to have the intent to defraud the Government of any duty payable (for such defrauding had already taken place) or to evade any prohibition or restriction (for such prohibition or restriction had already been evaded). In effect, the argument is that this part of s. 167(81) corresponds to s. 167(8) where a person has to be concerned in the actual importation before he can be liable to a penalty.

E

Now if the intention of the legislature was that the person guilty under s. 167(81) could only be a person who was concerned in some way or other with the actual importation or exportation it would have been easy for it to use the same words in s. 167(81) as were used in the first part of s. 167(8). But

F

the legislature has not done so and the question is whether the words used in s. 167(81) have a different meaning from those used in s. 167(8). What s. 167(81) requires is that the person who comes *inter alia* into possession of prohibited goods must know that there is some prohibition in force with respect thereto. But before he can be guilty under s. 167(81) it has further to

G

be shown that he intends to evade the prohibition. Where the case is not of prohibition but of duty, the person accused under s. 167(81) must be shown to know that the duty has not been paid and also to have the intention to defraud the Government of the duty payable on the goods. The question that arises is whether the third person who has come into possession knowingly that the goods are prohibited or the goods are dutiable and the duty has not been paid can be said to have the intention of evading the prohibition or to defraud the Government of the duty

H

payable, even though he may not have anything to do with the smuggling of the goods. A

It seems to us (taking a case of prohibition) that if the prohibition is still in force, the person who acquires possession of prohibited goods knowing them to be prohibited intends to evade the prohibition by the action, even though he may not have been concerned in the actual smuggling of the goods. So long as the prohibition lasts any person who comes into possession of prohibited goods, though he may not be concerned in the actual smuggling would still in our opinion have the intent to evade the prohibition when he remains in possession of the goods which are prohibited. The prohibition in our opinion does not come to an end as soon as the Customs frontier is crossed. So long as prohibition is in force and the goods are prohibited goods any person in possession thereof, even though he may not be concerned with the actual smuggling would still be guilty of evading the prohibition by keeping the goods in his possession. If this were not so, it would mean that once the prohibition has been successfully evaded by the actual smuggler the goods would be free from the taint of prohibition and could be dealt with by any person as if there is no prohibition with respect to them. If that were to be the meaning of s. 167(81) there would be a serious lacuna in this provision which is meant to prevent smuggling. Smuggling does not only stop at importing the goods in the face of prohibition; it envisages subsequent transactions like sale of the smuggled goods, for no one would take the risk of smuggling unless he can find a market for smuggled goods. Therefore the purchaser of smuggled goods though he may not be concerned in the smuggling would in our opinion be equally guilty of evading the prohibition by making the purchase. The same in our opinion applies to defrauding the Government of the duty. Where goods had been smuggled in without paying duty the smuggler in such a case also intends to sell the goods and make profit thereby. The purchaser of such smuggled goods even though he may have nothing to do with actual smuggling, usually acquires the goods at a lower price because the payment of duty has been evaded. Therefore when such goods reach even third hands there is always the intention to defraud the Government of the duty payable on the goods. This appears to us to be the true interpretation of s. 167(81), which as we have said earlier is in different words from the first part of s. 167(8), which deals with actual importation or exportation. Section 167(81) does not deal with actual importation or exportation; it deals with defrauding the Government of the duty payable or evading the prohibition or

A restriction. So long as the duty is payable and has not been paid or so long as the prohibition or restriction remains in force any person acquiring possession of goods on which duty has not been paid or restriction or prohibition has been evaded would have the intent either to defraud the Government of the duty payable for he acquires goods at a lower price or would have the intention

B to evade restriction or prohibition. If this were not so, there would be a premium on successful smuggling and once the goods have entered the country without paying duty or have entered the country after evading the prohibition or restriction, they can be dealt with as if they were duty paid goods or goods which had not evaded the prohibition or restriction. The purpose of

C s. 167(81) is to punish smuggling and stop it if possible. That purpose in our opinion would be completely defeated if the interpretation which has found favour with the High Court were accepted. We cannot therefore accept that the words used in s. 167(81) only apply up to the stage of actual

D importation and the person who is guilty thereunder must be somehow concerned in the actual importation. It seems to us that they apply in the case of prohibited or restricted goods so long as the prohibition or restriction lasts and whoever is in possession of such goods or comes into possession thereof, even after the smuggling is over must be attributed with the intention of evading the prohibition or restriction provided he knows

E that the goods were smuggled into the country in spite of the prohibition or restriction. Similarly where the goods are dutiable and the duty has not been paid on them any person acquires them with the knowledge that the duty thereon has not been paid would have the intention to defraud the Government of duty, even

F though he may not be the person actually concerned in the smuggling. We therefore hold that s. 167(81) has a wider sweep than s. 167(8) and it does not only apply to a person who may have been actually concerned in some way or other with smuggling but also *inter alia* to persons who may have come into possession of goods even after the smuggling was over. So long as the prohibition or restriction remains in force or the duty has not been

G paid even a third person coming into possession of such goods would have the intention either to evade the prohibition or restriction or to defraud the Government of the duty payable thereon.

H It remains now to refer to a few English cases because our Act of 1878 was modelled on the English Customs Consolidation Act, 1876. Decisions of English courts therefore with respect to corresponding provisions of the English Act would in our opinion be helpful in the matter of the interpretation of s. 167(81).

Section 186 of the English Act corresponds to many of the provisions contained in s. 167 of the Act. In particular, the provision corresponding to s. 167(81) is in these terms :—

“Every person who shall be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any such goods with intent to defraud Her Majesty of any duties due thereon or to evade any prohibition or restriction of or application to such goods”

“Such goods” in the context of the section mean either prohibited or restricted goods or goods on which duty is leviable.

The other clauses of s. 186 of the English Act do not specifically contain words relating to intent. But in *Frailey v. Charlton*⁽¹⁾ it was decided that intent to defraud the revenue or to evade a restriction or prohibition would apply to other clauses of s. 186 also. Thus the English Act by s. 186 also requires that a person who was concerned in carrying, removing etc., or in any manner dealing with any prohibited or restricted goods or dutiable goods must do so knowingly and with intent to defraud His Majesty of any duty due thereon or to evade any restriction or prohibition.

The interpretation of this provision in s. 186 was considered in *Beck v. Binks*⁽²⁾. In that case the facts were that a person was found in possession of uncustomed goods in London and it was urged, as was urged before the High Court in the present case, that the person concerned could not be said to be carrying the uncustomed goods with intent to defraud His Majesty of the duty because such an offence could only be committed by the actual smugglers or importers of goods or persons engaged in carrying the goods from the ship etc. at the port of importation with intent to evade the payment of duty or tax. This contention was negatived and the court held that “the offence of knowingly carrying or in any manner dealing with uncustomed goods with intent to defraud His Majesty of the duty due thereon contrary to s. 186 is not only committed at the port of entry or the place where the goods are actually landed; it is committed anywhere in the realm by a person acting in the manner described by the sub-section”. Lord Goddard C.J. made the following observations at p. 252 :—

“If a person is knowingly carrying uncustomed goods, he is assisting in the smuggling of the goods; for while goods are no doubt smuggled when they are brought into

(1) L.R. [1920] 1 K.B. 147.

(2) L.R. [1949] 1 K.B. 250.

A the country it is no good bringing smuggled goods into the country unless something can be done with them. Such a person is intending to defraud His Majesty of the customs as much as anybody else. The intent is there : it is all part of one operation.....Otherwise, a most extraordinary lacuna is left in the Act, for it can then be said that, once a man has got away from the port of entry or from the place where the goods were actually landed, no one dealing with the smuggled goods and carrying them inland will ever be guilty of an offence. I do not think that that has ever been held, and I am certainly not prepared to hold it now, I think it clear that this appelland was dealing with—that is, carrying—uncustomed goods and that he was carrying them with intent to defraud His Majesty of the duties thereon.”

The next case to which reference may be made is *Rex v. Cohen*⁽¹⁾. In that case 352 Swiss watches which were uncustomed were recovered from the accused and he was charged with being in possession of uncustomed goods with intent to defraud His Majesty of the duties thereon contrary to s. 186 of the English Act. Dealing with the question of intent to defraud, it was held that if the accused knew that the goods were uncustomed, the intention to defraud the revenue may be inferred. Here also the uncustomed goods were recovered from the house of the accused at Edgware and there was nothing to show that he was in any way concerned with actual smuggling. Even so, the court held that he must be held to be intending to defraud the revenue.

The next case to which reference may be made is *Sayce v. Coupe*⁽²⁾. In that case the accused was in possession of certain American cigarettes on which duty had not been paid. It was held that where a person has in his possession goods which are to his knowledge uncustomed and which he intends to use or sell, he is guilty of the offence of keeping uncustomed goods with intent to defraud the revenue of the duties thereon contrary to s. 186. In that case there was nothing to show that the accused had anything to do with the importation or smuggling of the goods. Even so, it was held that he had the intent to defraud the revenue.

The next case to which reference may be made is *Schneider v. Dawson*⁽³⁾. That was a case where a civilian bought from American servicemen cigars and spirits which had been imported free of duty for the use of United States Servicemen under an

(1) L.R. [1951] 1 K.B. 505.

(2) L.R. [1953] 1 K.B. 1.

(3) L.R. [1960] 2 Q.B. 106.

agreement between the British and American Governments and kept them for his own use. He was charged with knowingly and with intent to defraud Her Majesty of the duty payable thereon being concerned in keeping goods which were chargeable with duty on which duty had not been paid. It was held that the person's conduct clearly amounted to keeping the smuggled goods and there was intent to defraud the revenue. This case was under the English Customs and Excise Act of 1952, but the principle under the English Act of 1876 was followed.

These cases clearly indicate that the offence under the corresponding provision of the English Act can be committed long after the actual smuggling is over and even if the person found in possession of goods on which duty had not been paid had nothing to do with smuggling. These cases thus clearly support the interpretation we have put on the relevant words of s. 167(81).

Further the case of *Schneider*⁽¹⁾ shows that it has always been held in England that if dutiable goods have been brought into the country without paying the duty, the duty attaches to the goods brought into the country and though it may not have been paid at the moment of bringing the goods for some special reasons (as, for example, where it is meant for a foreign ambassador) the duty is leviable later on when the goods pass into the hands of persons other than the privileged person. The same in our view applies equally to goods which are smuggled into the country and the duty has been evaded. The duty always remains payable on goods which have been brought in without payment of duty and whoever deals with them even at a later stage after the operation of smuggling is over would still be liable to pay the duty and if he does not, he must have the intention to defraud the Government of revenue. The same applies to prohibition and restriction and so long as the prohibition or restriction remains in force, the person dealing with the smuggled goods which had evaded the prohibition or restriction must also be held to evade the prohibition or restriction. In the view that we have taken it is therefore unnecessary to consider when the import or smuggling ends, for s. 167(81) hits not only persons concerned in smuggling or importing but also all others who come into possession of or deal with smuggled goods after the smuggling is over.

Lastly learned counsel for the respondents refers us to s. 135 of the Customs Act (No. 52 of 1962). That section provides for what was formerly provided in s. 167 (81) of the Act. The argument is that it is in very different terms. That is undoubtedly so.

(1) L.R. [1960] 2 Q. B. 106.

- A But it does not follow from the fact that the corresponding section in the 1962 Act is differently worded that the provision in s. 167 (81) cannot have the meaning which is being pressed before us on behalf of the appellant. The interpretation of s. 167(81) must depend upon the language of that provision itself and on the language used in s. 167(8) we have no doubt that it applies
- B not only to an actual smuggler or a person concerned in smuggling but also to all others who may be concerned with smuggled goods after the smuggling is over.

- C In the view that we have taken of the meaning of s. 167(81) it follows that on facts found Sitaram Agarwala was concerned in dealing with prohibited or restricted goods. It also follows on facts found that he had the necessary knowledge and intent to evade the prohibition or the restriction even though he dealt with the goods after the smuggling was over and was not in any way concerned with actual smuggling. He would therefore be guilty under s. 167(81) of the Act. We therefore allow the appeal, set
- D aside the order of acquittal made by the High Court, restore the order of the Presidency Magistrate and confirm the sentence passed on Sitaram Agarwala by the Magistrate.

- E It also follows on facts found that Wang Chit Khaw is guilty under s. 167 (81) inasmuch as he was dealing with prohibited or restricted goods and had the necessary knowledge and intent as required under that section. We therefore allow the appeal, set aside the order of the High Court, restore that of the Presidency Magistrate and confirm the sentence passed on him by the Magistrate.

ORDER

- F In accordance with the opinion of the majority the appeals are allowed, the orders of the High Court are set aside, the orders of the Presidency Magistrate are restored and the sentences on the respondents are confirmed.