A

STATE OF MAHARASHTRA

v.

NATWARLAL DAMODARDAS SONI

December 4, 1979

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[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Code of Criminal Procedure—Anti Corruption Bureau seized smuggled gold from the house of the accused—Police—If had no jurisdiction to take cognizance.

Customs Act, 1962—*S.* 135—*Scope of—Burden of proof that gold seized is not smuggled gold—On whom rests.*

C

Words and phrases—"Acquired possession" or "Keeping"—Meaning of.

The Anti-Corruption Bureau of the Police raided the house of the respondent and recovered gold biscuits with foreign markings stitched in a jacket lying in a steel trunk underneath some clothes. At the time of the raid, the

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respondent was not in the house but his wife and mother were present. At about the same time the Customs Authorities also raided his house and took proceedings under the Customs Act, 1962 in respect of the smuggled gold found in the house. The respondent, who remained absconding, surrendered to the police a week thereafter.

At the trial the respondent contended that the gold was brought into his

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house by someone and left there in his absence and that, therefore, he had no connection with the gold. The trial court rejected the respondent's defence and convicted him of the offences.

On appeal, the High Court held that the prosecution had failed to prove that the gold found in the house of the respondent was gold on which duty had been evaded or the import of which was prohibited and that for that reason the further question whether the gold was smuggled gold did not arise. It also

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interpreted rule 126H(2)(d) of the Defence of India Rules 1962 read with rule 126 P(2)(iv) as confined to acquiring ownership and not to the more acquiring of possession and held that there was no acceptance of gold by the accused within the meaning of the Rules because not being present in the house, he had no choice of accepting or refusing the gold.

In appeal to this court it was contended on behalf of the respondent that

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(i) the search of his house and the seizure of gold by the police was illegal; (ii) that section 123 of the Customs Act was not applicable because the seizure was made not by the Customs Authorities but by the police under the Code of Criminal Procedure and therefore the burden of proving the offence lay on the police which it did not discharge.

Rejecting the respondent's contention and allowing the appeals,

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HELD : 1. The police had powers under the Code of Criminal Procedure to search and seize the gold if they had reason to believe that a cognizable offence had been committed. Assuming that the search was illegal it would

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not affect either the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs. [344 H]

Radhakishan v. *State of U.P.* [1963] Supp. 1 S.C.R. 408; *Shyam Lal Sharma & Anr.* v. *The State of Madhya Pradesh*, A.I.R. 1972 S.C. 886; *State of Kerala etc.* v. *Alasserry Mohammed etc.* A.I.R. 1978 S.C. 933; W. T. *Stone, Warden*, 74-1055 v. *Lloyd Charles Powell and Charles L. Wolff Jr. Warden*, 74-1222 v. *David L. Rice* (1976) USSC Bulletin, Vol. 2, B 4840, referred to.

2. (a) The High Court was in error in acquitting the appellant of the charges under clauses (a) and (b) of section 135(1) of the Customs Act, 1962. [350 G]

(b) Even if the prosecution could not invoke the provisions of section 123 of the Customs Act there was sufficient circumstantial evidence to establish that the gold was smuggled gold. [346 H]

(c) In order to substantiate a charge under clause (b) of section 135(1), the prosecution has to prove (i) that the accused had acquired possession or was in any way concerned in keeping or concealing the gold bars (ii) that he knew or had reason to believe that these gold bars were smuggled goods and thus liable to confiscation under section 111 of the Customs Act. [347 G]

(d) Even in cases where section 123(1) of the Customs Act is not attracted the prosecution can discharge its burden by establishing circumstances from which a prudent man acting prudently may infer that in all probability the goods in question were smuggled goods and the accused had the requisite guilty knowledge in respect thereof. [347 H]

Issardas Daulat Ram and Ors. v. *The Union of India* [1962] 1 Supp. S.C.R. 358; *Labhchand Dhanpat Singh Jain* v. *State of Maharashtra*, A.I.R. 1975 S.C. 182; *Balumal Jamnadas Batra* v. *State of Maharashtra*, A.I.R. 1975 S.C. 2083, referred to.

In the instant case while acquitting the accused the High Court overlooked several tell-tale circumstances appearing in evidence which establish that the gold was smuggled gold namely (a) the gold biscuits bore foreign markings which proclaimed their foreign origin; (b) they were of 24 carat purity which was not available in India at the material time; (c) the gold biscuits were found concealed stitched in the folds of a jacket specially prepared for this purpose; (d) the gold biscuits were of huge value and (e) after the seizure of the gold the accused absconded and continued to be a fugitive from justice till a week thereafter. All these circumstances show that the gold had been smuggled into the country from a foreign country in contravention of the Foreign Exchange Regulations Act, 1947. [347 C-E]

(e) The fact whether the gold had been imported with or without the necessary permission of the Reserve Bank of India was within the knowledge of the respondent. It was for him to rebut the inference which arose under section 114 of the Evidence Act. Once it is established that the respondent was in conscious possession or "keeping" of the gold it follows that he had the *mens rea* requisite under clauses (a) and (b) of section 135(1) of the Customs Act. [350 A-B]

A 3. (a) The expression "acquired possession" or "keeping" in section 135(1)(b) is not to be restricted to "possession" or "keeping" acquired as an owner or purchaser of the goods. Such a narrow construction would defeat the object of the provisions and undermine their efficacy as intruments for suppression of the mischief which the legislature had in view. [350 D]

(b) The expression "acquired possession" is of very wide amplitude and B includes acquisition or possession by a person in a capacity other than as owner or purchaser. The clause which is widely worded brings within its fold even temporary control or custody of a carrier, remover, depositor. harbourer, keeper or dealer of any goods which he knows or has reason to believe to be smuggled goods or prohibited goods (liable to confiscation under section 111). The expressions 'keeping" and "concealing" in the second phrase of clause (b) also cover the present case. [350 E]

C 4. The view of the High Court that rule 126H read with 126P of the Defence of India Rules has no application to this case on the ground that the respondent did not acquire possession of the gold biscuits for purchase or otherwise within the meaning of the Rules would emasculate the provisions and render them ineffective. These provisions have to be construed in a manner which will suppress the mischief and advance the object which the legislature had D in view. [351 D-E]

Balkrishna Chhaganlal v. *State of West Bengal* AIR, 1975 S.C. 2083, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 231 of 1973.

E Appeal by Special Leave from the Judgment and Order dated 13-10-1972 of the Bombay High Court in Crl. A. No. 73/71.

O. P. Rana and *M. N. Shroff* for the Appellant.

Shiv Pujan Singh (*Amicus Curiae*) *for the Respondent.*

The Judgment of the Court was delivered by

F SARKARIA, J.—This appeal by special leave is directed against a judgment dated October 13, 1972, of the High Court of Bombay.

Natwarlal, respondent herein, was prosecuted in the Court of the Presidency Magistrate 2nd Court, Mazgaon, Bombay, for offences (1) under Section 135(a) read with Section 135(i) of the Customs Act, G 1962, (2) under Section 135(b) read with Section 135(i) of the same Act, and (3) under Rule 126-H(2) (d) read with Rule 126-P(2)(iv) of the Defence of India Rules, 1962. The Magistrate convicted him in respect of these offences and sentenced him to suffer six months' rigorous imprisonment and to pay a fine of Rs. 1,000/- on H each count. The material facts are as follows :

On March 6, 1968, in consequence of certain information received by the staff of the Anti-Corruption Bureau, Bombay, residential pre-

mises of the accused-respondent at Old Hanuman Lane, Bombay was searched at about 1 p.m. The respondent himself was not present at his house, but his wife and mother were present in the premises at the time of the search. As a result of the search, the Anti-Corruption Bureau recovered 100 gold bars, each weighing 10 tolas. These gold bars had foreign markings and were in the shape of gold biscuits of 24 carats purity and were found stitched in a cotton jacket, which was lying in a steel trunk underneath some clothes. The prevailing market value of the recovered gold was Rs. 1,85,000. As the search was being completed and the Panchanama prepared, the Customs Authorities, also raided the premises. The Anti-Corruption Bureau, however, first completed its Panchanama and later on a separate Panchanama was prepared, under which the gold so seized by the Anti-Corruption Bureau was taken possession of by the Customs Authorities. The case of the prosecution further was that the respondent remained absconding after this recovery till March 14, 1968, when he surrendered.

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The Customs Authorities, also, took proceedings under the Customs Act, 1962, and during the course of those proceedings, recorded the statements of the accused respondent, his wife, and mother.

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At the trial, the accused respondent denied the charge and claimed to be tried. He, however, did not dispute the fact that the gold in question was found from his premises. Substantially, his defence was that this gold was brought into his premises by one Jayantilal Salla (P.W. 4) and left there in his absence. The respondent further pleaded that he had no connection with this gold. He asserted that if at all anybody was responsible, it was Jayantilal Salla, who has been examined as prosecution witness in this case.

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The learned Presidency Magistrate by his judgment dated October 16, 1960, found that the charges had been established against the respondent. He rejected the defence story and convicted the respondent as aforesaid.

Aggrieved, the respondent preferred an appeal against his conviction to the High Court. The appeal was heard by a learned Single Judge (Vimadlal, J.), who by his judgment, dated October 13, 1962, allowed the appeal, set aside the conviction of the respondent and acquitted him. Hence this appeal by the State of Maharashtra against that acquittal.

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The High Court has held "that the prosecution has failed to prove that the gold found in the house of the accused was gold on which duty

had been evaded, or the import of which was prohibited and, in that view of the matter, the first and second charges framed against the accused must fail, and the further question as to whether the accused knew that the gold in question was smuggled gold does not really arise". The High Court refused to consider the decision of this Court in *S. Banerjee v. S. Agarwal*(1), which was relied upon by the counsel for the State, with the observation:

> "Suffice it to say that the observations in the majority judgment of Wanchoo, J. in the said case would apply only if it was in the first instance proved by the prosecution that the gold in question was smuggled gold, which the prosecution has failed to prove in the present case."

As regards the third charge under Rule 126-H(2) (d) read with Rule 126-P(2)(iv) of the Defence of India Rules, 1962, the High Court held that the prosecution had failed to establish "that the accused had bought or otherwise acquired the gold without being a licensed dealer." In its opinion, the aforesaid Rules must be interpreted as being confined to acquiring of ownership and not to the mere acquiring of possession. It further held that there was no "acceptance" of gold by the accused within the meaning of Rule 126-P(2) of the Defence of India Rules, 1962, because the accused being away from home, had no choice of accepting or refusing the same.

As before the trial court, here also, learned counsel appearing for the respondent, contends that the search and seizure by the police of the gold from the house of the respondent, was illegal, that the information on the basis of which the police conducted the search was not produced; and that this illegality had vitiated the trial that followed. In the alternative, counsel submits that Section 123 of the Customs Act, which places the burden on the accused-person to show that seized goods are not smuggled gold, was not applicable in the present case, because the seizure of the gold was not made by the Customs Authorities under the Customs Act, 1962, but by the Police under the Code of Criminal Procedure. This being the case—proceeds the argument—the burden lay heavily on the prosecution to prove every ingredient of the offences with which the accused stood charged. It is maintained that the prosecution had miserably failed to produce any evidence to show that the gold in question was smuggled gold.

Taking the first contention first, it may be observed that the police had powers under the Code of Criminal Procedure to search and seize this gold if they had reason to believe that a cognizable offence

(1) (1966), 2 S.C.J. 111.

had been committed in respect thereof. Assuming arguendo, that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs.

In *Radhakrishan v. State of U.P.*(1) the appellant was a postman. He and his father were living in the same house. Certain undelivered postal articles were recovered from an almirah in the house, the key of which was produced by the father. The appellant, Radhakishan was tried and convicted of an offence under s. 52 of the Post Offices Act, for secreting postal articles. One of the contentions raised on behalf of the appellant was that the search and seizure was illegal inasmuch as it was in contravention of the provisions of Sections 103 and 165 of the Code of Criminal Procedure. Mudholkar, J. speaking for the Court, repelled this contention, thus :

> "So far as the alleged illegality of the search is concerned, it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of ss. 103 and 165, Code of Criminal Procedure, are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues."

These observations apply aptly to the instant case.

Again, in *Shyam Lal Sharma & Anr.* v. *The State of Madhya Pradesh*(2), Jaganmohan Reddy, J., delivering the opinion of the Bench, held that even if the search is illegal being in contravention with the requirements of Section 165, Criminal Procedure Code, 1898, that provision ceases to have any application to the subsequent steps in the investigation.

In *State of Kerala etc.* v. *Alasserry Mohammed etc.*,(3) question arose, whether the failure on the part of the Food Inspector to comply strictly with the statutory provisions, would vitiate the trial and conviction of the respondent ? This Court answered this question in

(1) [1963] Supp. 1 S.C.R. 408.

(2) A.I.R. 1972 S.C. 886.

(3) A.I.R. 1978 S.C. 933.

A the negative, and referred with approval to the decision, dated July 6, 1976, in *W.T. Stone, Warden,* 74-1055 v. *Lloyd Charles Powell and Charles L. Wolff Jr. Warden,* 74-1222 v. *David L. Rice*(1), wherein the Supreme Court of the United States of America made a clear departure from its previous decision in the application of the exclusionary rule of evidence. The prosecution in those cases relied upon the evi-
B dence of search and seizure, which were said to be unconstitutional and unlawful. Mr. Justice Powell, who delivered the leading majority judgment, made these pertinent observations :

> "Upon examination, we conclude, in light of the nature and purpose of the Fourth Amendment exclusionary rule,
C that this view is unjustified. We hold, therefore, that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a State prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."
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In his concurring opinion, Chief Justice Burger highlighted the injustice that often resulted from application of the exclusionary rule. Said the learned Chief Justice :

> "To vindicate the continued existence of this judge-made
E rule, it is incumbent upon those who seek its retention—and surely its extension—to demonstrate that it serves its declared deterrent purpose and to show that the results outweigh the rule's heavy costs to rational enforcement of the Criminal Law See. e.g. *Killough* v. *United States,* [315 F 2d 241 (1962)]. The burden rightly rests upon those who ask so-
F ciety to ignore trustworthy evidence of guilt, at the expense of setting obviously guilty criminals free to ply their trade."

What has been said above is more than enough to show that the first contention raised on behalf of the respondent is devoid of merit.

G As regards the second contention canvassed by Shri Shiv Punjan Singh, we would say that even if the prosecution cannot invoke the provisions of Section 123. Customs Act, to lighten the burden cast on it, there is sufficient circumstantial evidence to establish that the gold in question was smuggled gold. Before dealing with that evidence, it will be useful to notice the relevant provisions relating to the charges
H against the respondent.

(1) (1976) U.S.S.C. Bulletin, Vol. 2, B 4840.

First, we take up the charges under Section 135 of the Customs Act, 1962. The material part of that Section reads as under :

"135.(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,

he shall be punishable,—

(i) in the case of an offence relating to any of the goods to which Section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both".

Section 111 enumerates the categories of goods which are imported into India and are liable to confiscation. Broadly speaking, these categories relate to goods which are smuggled into India.

The requisite guilty knowledge or *mens rea* under clauses (a) and (b) of Section 135(1) can be established by circumstantial evidence, also. In order to substantiate the charge under clause (b) against the respondent, the prosecution had to prove (i) that he had acquired possession of or was in any way concerned in keeping or concealing the gold bars; (ii) that he knew or had reason to believe that these gold bars were smuggled goods, and thus liable to confiscation under Section 111 of the Customs Act.

It is trite law that even in cases where Section 123(1) of the Customs Act is not attracted, the prosecution can discharge its burden by establishing circumstances from which a prudent man, acting pru-

A dently, may infer that in all probability the goods in question were smuggled goods, and the accused had the requisite guilty knowledge in respect thereof. The leading case is : *Issardas Daulat Ram and Ors.* v. *The Union of India & Ors.*(1) In that case, in reaching the conclusion that the gold had been smuggled, the Collector of Customs considered the credibility of the story put forward by the appellant about B the purchase of the gold and also the conduct of the appellant in trying to get the gold melted so as to reduce its fineness by mixing silver with it, in an attempt to approximate the resultant product to iicit gold found in the market. The *ratio* of this decision was followed by this Court in *Labhchand Dhanpat Singh Jain* v. *State of Maharashtra*(2): The appellant-accused therein was trying to enter the Railway C compartment at Bombay Station. Seeing his nervousness, the Railway police questioned him and searched his person and recovered nine bars of gold with foreign markings. The accused put forward an incredible story with regard to the possession of the gold. This Court held, that in the circumstances of the case, an inference could very well D be drawn that the gold must have been imported after the law passed in 1948, restricting its entry; that the burden of proving an innocent receipt of gold lay upon the appellant under Section 106, Evidence Act and that the totality of facts proved is enough to raise a presumption under Section 114, Evidence Act that the gold had been illegally imported into the country, so as to be covered by Section 111(d) of E the Customs Act.

It is to be noted that in *Labhchand's* case (ibid), Section 123 of the Customs Act was not applicable, as the seizure of the gold was by the police and not by the Customs Officer. The Courts in that case did not use this presumption under Section 123 of the Evidence Act F against the appellant. They relied upon the circumstantial evidence to raise the necessary inference with regard to the character of the gold seized and the possession of the requisite *mens rea* by the accused. The *ratio* of *Labhchand's* case (ibid) applies a *fortiori* to the facts of the case before us.

G In *Balumal Jamnadas Batra* v. *State of Maharashtra*(3) a Bench of this Court to which one of us (Sarkaria J.) was a party, eleven boxes were seized by the Police from Room No. 10 at Sheriff Deoji Street, Bombay. On opening the boxes, goods bearing foreign markings such as "Made in Germany", were found. A rent receipt in the name of the accused in respect of Room No. 10, in the occupation of the accused

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(1) [1962] 1 Supp. S.C.R. 358.
(2) A.I.R. 1975 S.C. 182.
(3) A.I.R. 1975 S.C. 2083.

was also recovered. It was held by this Court, that even if the goods bearing foreign markings, were not seized under the Customs Act, and as such Section 123(1) of the Act was not attracted, the aforementioned circumstances, under Section 114 read with Section 106 of the Evidence Act were sufficient to presume that the accused knew that the goods had been smuggled or imported in contravention of law.

In the instant case while holding that the respondent was in conscious possession of the gold bars in question, the High Court has acquitted him only on the ground that the prosecution had failed to prove that the gold in question had been imported after 1947 without the necessary permission of the Reserve Bank, or without payment of duty and that the further question as to whether the accused knew that it was smuggled gold "does not really arise". With this reasoning the High Court acquitted the respondent on the first two charges under Section 135 of the Customs Act. The High Court overlooked several tell-tale circumstances appearing in evidence which unerringly pointed to the conclusion that the gold in question was smuggled gold. These circumstances are: (a) the gold biscuits in question bore foreign markings which proclaimed their foreign origin. (b) This gold was of 24 carat purity which was not available in India at the material time. This circumstance reinforce the inference of its being smuggled gold. (c) These gold biscuits were found concealed and stitched in the folds of a jacket specially prepared for this purpose. (d) The gold, was in the shape of gold biscuits and was of huge value, which at the then prevailing market rate was Rs. 1,85,000. (e) After the seizure of this gold the accused absconded and continued to be a fugitive from justice till March 14, 1962.

The circumstances catalogued above irresistibly read to the conclusion that the gold in question is smuggled gold, having been recently brought into India from a foreign country without payment of duty, and further it had been brought into India in contravention of the Notification dated March 25, 1947 issued by the Central Government under Section 8(1) of Foreign Exchange Regulation Act, 1947 prohibiting the import into India gold without the permission of the Reserve Bank. As already noticed, this gold was in the shape of biscuits of 24 carat purity and bore foreign markings. The accused respondent—as held by the courts below—was found in *conscious* 'possession' or 'keeping' of this gold of foreign origin about 15 years after its import into India had been banned. Therefore, it was for the accused respondent

A to show that it had been brought into India—with the permission of the Reserve Bank. The existence of this fact viz., whether it had been imported with or without the necessary permission of the Reserve Bank, was a matter within the peculiar knowledge of the accused-respondent. It was, therefore, for the accused to rebut the
B inference which arose under Section 114, Evidence Act from the surrounding circumstances of the case, that it was contraband gold, smuggled into India. Once it is held that the accused was in conscious possession or "keeping" of this smuggled gold, it will follow as a necessary corrollary therefrom that he had the *mens rea* requisite under clauses (a) and (b) of Section 135(1). It may be remembered that
C smuggling, particularly of gold, into India affects the public economy and financial stability of the country. The provisions of Section 135(1) and like statutes which are designed to suppress smuggling have to be construed in accordance with the Mischief Rule first enunciated in *Heydons case*. Accordingly the words "acquires possession" or keeping" in clause (b) of Section 135(1) are not to be restricted to
D "possession" or "keeping" acquired as an owner or a purchaser of the goods. Such a narrow construction—which has been erroneously adopted by the High Court—in our opinion, would defeat the object of these provisions and undermine their efficacy as instruments for suppression of the mischief which the Legislature had in view. Construe
E ed in consonance with the scheme of the statute, the purpose of these provisions and the context, the expression "acquires possession" is of very wide amplitude and will certainly include the acquisition of possession by a person in a capacity other than as owner or purchaser. This expression takes its colour from the succeeding phrase commencing with the word "or" which is so widely worded that even the temporary
F control or custody of a carrier, remover, depositor, harbourer, keeper, or dealer of any goods which he knows or has reason to believe to be smuggled goods or prohibited goods (liable to confiscation under Section 111) cannot escape the tentacles of clause (b). The expressions "keeping" and "concealing" in the second phrase of clause (b) also cover the present case.

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From the above discussion, it is clear that the High Court was in error in acquitting the appellant of the charges under Section 135(1), (a)&(b) of the Customs Act.

H This takes us to the charge under Rule 126H(2)(d) read with Rule 126P(2)(iv) of the Defence of India Rules,1962. These Rules so far as material for our purpose, may be extracted as under :

"126H(2). Save as otherwise provided in this Part,— A

(d) no person other than a dealer licensed under this Part shall buy or otherwise acquire or agree to buy or otherwise acquire, gold, not being ornament, except,

(i) by succession, intestate or testamentary or

(ii) in accordance with a permit granted by the Board in this behalf." B

"126P(2). Whoever,—

(ii) has in his possession or under his control any quantity of gold in contravention of any provision of this Part;

(iv) buys, or otherwise acquires, or accepts gold in contravention of any provision of this Part, C

shall be punishable with imprisonment for a term of not less than six months and not more than two years and also with fine." D

The High Court has held that these Rules do not apply because the accused respondent had not acquired possession of these gold biscuits by purchase or otherwise within the meaning of these Rules. Such a narrow construction of this expression, in our opinion, will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. As was pointed out by this Court in *Balakrishna Chhaganlal* v. *State of West Bengal*(1); Rule 126P(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, and the Court cannot 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. These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the Legislature had in view. The High Court was, in error in adopting too narrow a construction which tends to stultify the law. The second charge thus had been fully established against the respondent. E F G

Mr. Shiv Pujan Singh, for the respondent, submits that this prosecution has been brooding over the head of the respondent for more than eleven years and that the arch criminal who was the owner of the gold biscuits in question has escaped making the respondent a scapegoat. It H

(1) A. I. R. 1975S. C. 2083.

A is stressed that the accused is a first offender and he should be released on probation.

Undoubtedly, this long delay is a factor which should along with the other circumstances, be taken into account in mitigation of the sentence. Even so, in a case of gold smuggling we are loath to B accord to the accused, found guilty, the benefit of the Probation of Offenders Act. Smuggling of gold not only affects public revenues and public economy but often escaped detection.

For the foregoing reasons, we allow this appeal, set aside the acquittal of the accused, Natwarlal Damodardas Soni, and convict him under C Section 135(1)(a)&(b). However, taking into account all the circumstances of the case, particularly the fact that these criminal proceedings, like sword of damocles, have been hanging over the head of the respondent for more than eleven years, we sentence him cumulatively on these two counts, to six months imprisonment and a fine of Rs. 2,000, and in default, to suffer four months further imprison- D ment. We further convict him under Rule 126P(2) of the Defence of India Rules, 1962 and sentence him to six months rigorous imprisonment. The sentence on all the counts shall run concurrently. The bail of the accused-respondent is cancelled. He must surrender to serve out the sentence inflicted on him.

E P.B.R. *Appeal allowed.*

MGIPF—868SCI/79—2,500—30-7-80.