Supreme Court of India
K.I. Pavunny vs Assistant Collector (Head ... on 3 February, 1997
Author: K Ramaswamy
Bench: K. Ramaswamy, S. Saghir Ahmad, G.B. Pattanaik

PETITIONER:
K.I. PAVUNNY

Vs.

RESPONDENT:
ASSISTANT COLLECTOR (HEAD QUARTER),CENTRAL EXCISE COLLECTORA

DATE OF JUDGMENT: 03/02/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

This appeal by special leave has come up before this Bench, pursuant to a reference order dated November 9, 1994 passed by a two-Judge Bench, to consider whether the confessional statement of the appellant given to the Customs officers under Section 108 of the Customs Act, 1962 (for short, the 'Act', though retracted at a later stage, is admissible in evidence and could form basis for conviction and whether retracted confessional statement requires corroboration on material particulars from independent evidence? In support of the reference, the learned Judges have cited Kashmira Singh V/s. The State of Madhya Pradesh [AIR 1952 SC 159] and Chandrakant Chimanlal Desai V/S. State of Gujarat [(1992) 1 SCC 4731.

The facts in this case are that at 8.00 a.m. on December 6, 1980, 200 gold biscuits of foreign making were recovered from the compound of the appellant's house in his presence after digging got done by the Customs official, PW- 2, T.K. Rajasekaran, Superintendent of Customs, and PW-5, N. Gopalan Nambiar, Inspector and two panch witnesses, PW-3 and another. The same were kept concealed in a wooden box burried in the ground visible through the window of his bed- room. The appellant gave, in his own handwriting, confessional statement, Ex. P-4, at 1.00 p.m. on the said date before the Customs officials. In the proceedings for confiscation, 200 gold biscuits, since

unclaimed, were confiscated. But the imposition of penalty was set aside which became final. Thereafter, the complaint was filed by PW-1, the Collector of Customs on May 15, 1982 and it was refiled on January 1, 1985. The appellant was apprehended on June 19, 1982 and was released on bail. The prosecution case hinges upon the retracted confessional statement, Ex. P-4, the recovery proceedings, Ex. P-3. and evidence of witnesses, PWs-1 to 5 for proof of recovery of the contraband from the compound of the appellant's house. The Magistrate by his judgment dated March 29, 1986 acquitted the appellant of the charges under Section 135 (1) (i) of the Act and Sections 85 (1) (a) and 86 of the Gold (Control) Act, 1968. On appeal, the learned Single Judge of the Kerala High Court by the impugned judgment dated July 13, 1988 set aside the acquittal and convicted the appellant of the aforesaid offence and sentenced him to undergo imprisonment for a period of 1 year and 6 months respectively and both the sentences were directed to run concurrently.

Shri Thakur, learned senior counsel for the appellant, has contended that the confessional statement, Ex. P-4 was obtained by coercion and threat of implicating his wife in the offences and, therefore, the appellant had not made voluntary statement. The recovery of the gold biscuits from his compound was shrouded with several suspicious features. He further argued that the panch witness, PW-3 was involved in smuggling activities and initially a warrant to search his house was obtained but when the same proved unsuccessful, recovery come to be made from the house of the appellant. They went to the compound and straightaway got the spot located and drugged up the place from which the gold biscuits were recovered. That would go to show that PW- 3 had implanted them in the compound of the appellant for safe custody thereof. Unless the appellant had conscious possession of the contraband, he could not be convicted of the offence. The Magistrate has given valid and cogent reasons in support of his conclusion that the prosecution failed to prove the case beyond reasonable doubt. The High Court, without properly appreciating the reasons given by the Magistrate and without finding whether or not those reasons were sustainable on the basis of the evidence on record, independently considered the evidence and reached the conclusion that the prosecution had proved its case against the appellant beyond reasonable doubt. The approach adopted by the High Court is not correct in law. He also contended that the learned Judge should have first marshalled the facts and circumstances to conclude whether prosecution has independently proved its case de hors Ex. P- 4 which could be considered first to be a voluntary confession or was obtained by threat, coercion or inducement. Even in reaching the conclusion that it was a voluntary confession it could not by itself form the basis for conviction. It could be used only to corroborate other independent evidence which should inculpate the appellant in the commission of the offence. On proof of those facts, the retracted confession could be used as evidence corroborative to satisfy the conscience of the Court that the prosecution has proved its case beyond reasonable doubt from other evidence on record. In support thereof, he placed reliance on Kashmira Singh's case and Chandrakant Chimanlal Desai's case. In support of his contention that Customs officers, PW-2 and PW-5 are persons in authority under Section 24 of the Evidence Act, he cited Vallabhdas Liladhar & Ors. V/s. Assistant Collector of Customs [(1965) 3 SCR 854]. He further contended that the moment the Customs Officer had taken the appellant into custody, he had become a person accused of the offence and that the confession made during the custody, obtained by coercion and threat of implication of his wife into the crime was not voluntary and consequently Ex. P-4 is not admissible in evidence under Section 24 of the Evidence Act. In support thereof, he placed reliance on State of U.P. V/s. Deoman Upadhyaya [(1961) 1 SCR 14]. The adduction of

evidence by the prosecution must be tested on the touchstone of fairness of procedure and its trustworthiness. The confessional statement, Ex. P-4 obtained by threat and coercion being inadmissible, it could not be pressed into service and the prosecution could not make it a base for proving the offences charged against the appellant. The possession of contraband should be conscious possession which must independently be proved beyond reasonable doubt. When the Magistrate considered all the evidence and gave him the benefit of doubt, the High Court did not test the correctness of all the reasons of the Magistrate, reversal of the acquittal by the High Court is bad in law. In support thereof, he relied upon Satbir Singh & Anr. etc. etc. V/s. State of Punjab [(1977) 3 SCR 195].

When we asked the learned counsel appearing for the Union of India whether Customs officer is a person in authority, the learned counsel started arguing that under Section 108 of the Act the officers are empowered to record the statement of the accused and then he pointed out that under the Act, though they were authorised to have the statement of the accused recorded under Section 108, in view of the ratio of Vallabhdas Liladhar case they are persons in authority. He started conceding to the question whether confession is inadmissible in evidence and prosecution could rely thereon, he started conceding to the question. We are constrained to observe at this stage that though the two- Judge Bench referred the question of law to a three-Judge Bench, the learned counsel did not make any attempt to investigate into the questions of law and was on the brink of making concessions and proceeded to argue on that premise. Since wrong concession, in particular on question of law, does not bind this Court and there are plethora of precedents covering the field, we pointed out to the counsel that he rendered no assistance to the Court constraining it to independently investigate into the matter by itself. Accordingly, we closed the arguments. Without meaning any disrespect to the learned counsel, we are at pains to point out that the persons involved in contravention of the provisions of the Act are white-collared offenders and organised gangsters get the best of talent in the profession to assist them. The Union of India should take care to entrust these sensitive cases of far reaching effect, in particular on question of law, to counsel who have experience and ability in that branch of law to defend their cases. Lest it is public justice that suffers and economy of the country is put to jeopardy. Unfortunately, the counsel did not make any effort to analyse the provisions of the Act nor did he make investigation into question to law from the decisions rendered by this court. At this juncture, it is further relevant to point out that when the Union of India has its panel of counsel, they should see to it that work is assigned to the counsel who can competently argued the case in that behalf lest, for lack of assistance, investigation and marshaling the questions of fact and law, public justice tends to suffer. We would greatly appreciate the counsel appearing for the appellant who placed for consideration all aspects of the case on law and facts. it is, therefore, for the Secretaries of the Departments of Law 7 Justice and Finance to look into the matter and set their house in order; equally, the Attorney General of India should also see that the affairs in the Central Agency in the Supreme Court are organised accordingly. We have pointed out all this only to express our deep anxiety as the burden on the Court is multiplied to undertake unto itself the task of investigating into all aspects to consider the case so as to reach satisfactory conclusion.

The primary question, as referred to us for consideration, is: whether the retracted confessional statement, Ex. P-4, by the appellant is inadmissible in evidence under Section 24 of the Evidence Act

and what is the scope for its consideration? Since we did not receive any assistance on the question of law, we have independently investigated the case law ourselves and to the extent we could lay our hands, we are dealing with the relevant case law in that behalf. Section 24 of the Evidence Act deals with admissibility of the confession. it reads as under:

"24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

A bare reading of the above provision would indicate that for application of Section 24 of the Evidence Art, the following ingredients are required to be established: (a) the statement in question is a confession: (b) such confession has been made by an accused; (c) it has been made to a person in authority; (d) it was obtained by reason of any inducement, threat or promise proceeding from a person in authority; (e) such inducement, threat or promise must have reference to the charge against the accused person; and

(f) the inducement, threat or promise must be, in the opinion of the Court is sufficient to give an accused person grounds which would appear to him to be reasonable by supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The question, therefore, is; whether the appellant was a person accused of an offence on December 15, 1980 at 1.00 p.m. when the confessional statement was given by the appellant, admittedly, in his own hand-writing, (Ex. P-4) being the English translation thereof) on the even date or when he was summoned by PW-2 and PW-5 to the Customs office on the same day? Section 108 (1) of the Act empowers any Gazet ted officer of Customs to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry which such officer is making in connection with the smuggling of any goods. The person so summoned has an opportunity of locus penitential to give true and correct statement and also an opportunity to reflect upon and tender the evidence, be it recorder or given in his own hand- writing. Under sub-section (3), all persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct, and to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. However, by operation of the proviso to sub-section (3), exemption under Section 132 of the code of civil Procedure, 1908 shall be applicable to any requisition for attendance under the said section. Sub- section (4) envisages that every such inquiry, as aforesaid, will be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (IPC).

In Romesh Chandra Mehta V/s. State of West Bengal [(1969) 2 SCR 461) a Constitution Bench of this Court held at page 466 that the Customs officers are entrusted with the powers specifically relating to the collection of custom duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, x-ray the body of the person for detecting secreted goods, to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate, to search any place within the local limits of the jurisdiction of such Magistrate, to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Sea Customs Act. he is empowered to investigate into the infringement of the provisions of the Act primarily for the purpose of adjudicating forfeiture and penalty. He has no power to investigate into an offence triable by a Magistrate, nor has he the power to submit a report under Section 173 of the code of criminal Procedure (for short, the 'Code']. He can only make a complaint in writing before a competent Magistrate. The above law was laid down under the Sea Customs Act, the predecessor of the Act. The ration therein equally applies to the powers exercised by the Customs Officer under the Act. The Act enlarges their powers. The Customs officer is not a police officer nor is he empowered to file charge-sheet under Section 173 of the code though he conducts enquiry akin to an investigation under some of the provisions of the Code. His acts are in the nature of civil proceedings for collecting evidence to take further action to adjudicate the infringement of the Act and for imposition of penalty prescribed thereunder which would be self-evident from sub-section (4) of Section 108.

The question that is; whether the appellant is a person accused of an offence within the meaning of Section 24 of the Evidence Act? The question is no longer res integra. It is seen that the connotation of the words "person accused of the offence" under Section 24 of the Evidence Act is generally referable to initiate investigation of cognisable offence in Chapter XII of the Code of 1894 and the code. It is not necessary, for the purpose of this case, to undertake elaborate consideration as to when the person becomes a person accused of an offence under the code. Suffice it to state that in a reasoned judgment, a two Judge bench of this court elaborately considered this question in Directorate of enforcement V/s. Deepak Mahajan & Anr. [(1994) 3 SCC 440] thus obviating the need to dwell in depth on the same now. Therein, the question was whether, when the person had surrendered before a magistrate and was arrested under Section 38 of Foreign Exchange Regulation Act, the Magistrate had jurisdiction to authorise his detention under Section 167 (2) of the Code. In that behalf, it was held that the person who surrendered before the magistrate was accused of an offence and that, therefore, gave the Magistrate the power to proceed further under the code to remand the person to the judicial custody. As regards the person arrested for committing an offence under the Act, in Romesh Chandra Mehtra's case (supra), at page 740, Constitution Bench held that

Customs Officer does not at the stage of enquiry accused the person suspected of infringing the provisions of the Sea Customs Act, with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act. In Illias V/s. Collector of Customs, Madras (1969) 2 SCR 6131 another Constitution Bench had held that Customs authorities have been invested under the Act with many powers of a police officer in matters relating to arrest, investigation and search, which the customs officers did not have under the Sea Customs Act. Even though the Customs officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognisable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them. It was further held at page 618 that as regards the procedure for search the important change which has been made in the Act is that under Section 105 if the Assistant collector of Customs has reason to believe that any goods liable to confiscation or any documents or things are secreted in any place, he may authorise any officer of Customs to search or may himself search for such goods, documents or things without warrant from the magistrate.

It would thus be clear that the appellant was not a person accused of the offence under the Act when he gave his statement under Section 108 of the Act on December 6, 1980 at 1.00 p.m. in the office of the Superintendent of Customs, PW-2. The question then is: as to when the appellant became an accused of the offence? This court in Veera Ibrahim V/s The State of Maharashtra [(1976) 2 SCC 302] had held in para 9 that an accusation which would stamp him with the character of such a person was labelled only when the complaint was filed against him by the Assistant collector of Customs complaining of the commission of the offences under Section 135 (a) and Section 135 (b) of the Act. In that case the appellant was initially arrested by the police on December 12, 1967 on suspicion of having committed an offence under Section 124 of the bombay Police Act and panchnama of the packages in the truck was also prepared. But the police did not register any case or enter any F.I.R. nor did the police open the packages or prepare inventories of the goods packed therein. They dropped further proceedings but informed the Customs authorities, who opened the packages and on inspection finding them contraband goods, seized them under a panchnama. They took the appellant and others into custody after due compliance with the requirements of law. The Inspector of customs questioned the appellant and recorded his statement under Section 108 of the Act. Subsequently, he was charged for the offence under Section 135 of the Act. It was contended that he was an accused of the offence when the Customs officers recorded his statement and he was under testimonial compulsion prohibited under Article 20 (3) of the constitution. This court held that he was not an accused person of an offence at that time and confession was not inadmissible. But on facts it was held in that case that the confession was not inculpatory but one exculpating him from the offence. It was, therefore, held that the statement could not be pressed into service by the State. However, on other evidence, the convicting under Section 135 was upheld. Ratio of Romesh Chandra Mehta's case was applied.

In Magbool Hussain V/s. The State of Bombay [(1953) SCR 730], another constitution Bench held that hierarchy of officers under the Sea Customs Act is not the same as of police officers. That Act was enacted to prevent smuggling. The Customs Officers are empowered to arrest persons

reasonably suspected of having committed an offence under the Sea Customs Act but the person arrested has to be taken forthwith before the nearest Magistrate or Customs collector. The magistrate is empowered to commit such persons to jail or order him to be kept in custody of the police for such time as may be necessary to enable the magistrate to communicate with the proper officer of the Customs. In State of Punjab V/s. Barkat Ram [(1962) 3 SCR 338] a three-judge Bench per majority held that the confession made to the Customs Officer and conviction on the basis of such confession under the Land customs Act, 1924 was held valid. The majority view was approved in Romesh Chandra Mehta's case and in Illias case. The following four propositions were laid in the judgment and approved in Illias case (supra):

> "(1) The police is the instrument for the prevention and detection of crime which can be said to be the main object of having the police. The powers of customs officers are really not for such purpose and are meant for checking the smuggling of goods and due realization of customs duties and for determining the action to be taken in the interest of the revenue of the country by way of confiscation of goods on which on duty had been paid and by imposing penalties and fines.
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> (2) The customs staff has merely to make a report in relation to offences which are to be dealt with by a Magistrate. The customs officer, therefore, is not primarily concerned with the detection and punishment of crime but he is merely interested in the detection and prevention of smuggling of goods and safeguarding the recovery of customs duties. (3) The powers of search etc. conferred on the customs officers are of a limited character and have a limited object of safeguarding the revenues of the State and the statute itself refers to police officers in contradistinction to customs officers.
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> (4) If a customs officer takes evidence under Section 171A and there is an admission of guilt, it will be too much to say that that statement is a confession to a police officer as a police officer never acts judicially and no proceeding before him is deemed to be a judicial proceeding for the purpose of ss. 193 and 228 of the Indian Penal Code or for any other purpose."

In that case when the confessional statements wee sought to be relied as evidence, objection was raised that they were inadmissible under Section 25 of the Evidence Act. This Court overruled the objection and held that they were admissible in evidence. It was further held that the Customs Officers were not police officers under the Act. Equally, in Romesh Chandra mehta (supra) the objections as to admissibility under Section 25 of the Evidence Act on the basis of violation of Article 20 (3) of the constitution were rejected.

In Thomas Dana V/s. The state of Punjab [(1959) Supp. 1 SCR 274], another constitution bench was concerned with the question whether the conviction under the Sea Customs Act, after the confiscation proceedings became final, was violative of Article 20 (2) of the constitution (double jeopardy). The Constitution bench held that it was not violative of Article 20 (2) since the two proceedings were independent and distinct of each other. One is for confiscation for infringement of the provisions of the Act and the second is in respect of charge of criminal offence. Accordingly, we

have no hesitation to hold that the appellant was not accused of an offence when he gave in his own hand-writing his confessional statement, Ex.P-4.

The question then is: whether the confession under Section 24 of the Evidence Act was obtained by threat, force or inducement etc. and thereby is inadmissible in evidence? In Vallabhdas Liladhar case (supra) the Constitution Bench had held that the statements made before the Customs authorities were used in support of the prosecution case. The admission thereunder constituted the evidence in proof of the charge. It was held at page 858 that the Customs authorities must be taken to be persons in authority under Section 24. The statements would be inadmissible in criminal trial if it is proved that they were caused by inducement, threat or promise. However, on the facts in that case it was held that the statements were not obtained by any threat. inducement or promise. The conviction on the basis of the retracted confession was upheld. The question then is: whether by reason of the authority under the Act in particular Section 108, the statement of the appellant is inadmissible under Section 24 of the Evidence Act? In Percy Rustomji Basta V/s. The State of Maharashtra [AIR 1971 SC 1087], a Bench of two-Judges considered the question whether by reason of the recording of the evidence during the course of the inquiry under the Act the statement would be construed to be compulsive statements emanating from persons in authority so as to become inadmissible under Section 24 of the Evidence Act. In para 20 of the judgment it was held that it was not disputed that P.W. 5 who recorded the confession, was a person in authority within the Act. But the question was whether, when P.W. 5 drew the attention of the appellant to the fact that the Inquiry was a judicial proceeding to which Section 193, I.P.C. applied and that the appellant was bound to speak the truth, it could be considered to be a threat, inducement or promise emanating from a person in authority under the section. In para 24 it was considered and held that "a person summoned under Section 108 of the Act is told by the statute itself that under threat of criminal prosecution he is bound to speak what he knows and state it truthfully. But it must be noted that a compulsion to speak the truth, even though it may amount to a threat, emanated not from the officer who recorded the statement, but from the provisions of the statute itself. What is necessary to constitute a threat under Section 24 of the Evidence Act is that it must emanate from the person in authority. In the case before us there was no such threat emanating from P.W.5, who recorded the statement or P.W. 19, who was guiding the proceedings. On the contrary, the officers recording the statement were only doing their duty in bringing to the notice of the appellant the provisions of the statute. Even if P.W. 5 had not drawn the attention of the appellant to the fact that the inquiry conducted by him is deemed to be a judicial proceeding, to which Section 193, I.P.C. applies, the appellant was bound to speak the truth when summoned under Section 108 of the Act with the added risk of being prosecuted, if he gave false evidence." it was further held that "it is not every threat, inducement or promise even emanating from the person in authority that is hit by Section 24 of the Evidence Act. In order to attract the bar, it has to be such an inducement, threat or promise, which should lead the accused to suppose that "by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him". In the case before us, what is it that the appellant has been told? he has been told that the law requires him to tell the truth and if does not tell the truth, he may be prosecuted under Section 193, I.P.C. for giving false evidence". The plea of the appellant therein was that he was compelled to make the statement under the threat that otherwise his mother and another brother would be prosecuted. He had further stated that he was induced to make statement on the belief that it will be used only against the second accused and

not against him. These pleas of the appellant therein had been disbelieved by both the trial Court and the High Court. Therefore, it was held that even assuming that there was an inducement or threat, the appellant therein had no basis for supposing that by making the statement he would gain any advantage or avoid any evil with reference to the proceedings in respect of which an inquiry was being conducted by the Customs Officers. Therefore, even on this ground also Section 24 of the Evidence Act had no application. The above ratio squarely applies to the facts in this case. The appellant was under legal duty to state the facts truthfully lest he would be liable to prosecution. The threat emanates from and is that of the statute and the officers merely enforced the law. the allegations as to threat of implication of his wife was an afterthought and he did not mention the same when he appeared before the magistrate and obtained bail.

In Poolpandi etc. etc. V/s. Superintendent, Central Excise and Ors. etc. etc. (1992) 3 SCR 247] a three-Judge Bench was to consider whether the appellant therein was entitled to the presence of a counsel at the time of recording of his statement under Section 108 of the Act. In that context, this Court considered the ratio of Romesh Chandra Mehta's case and Illias case (supra) and held that "just, fair and reasonable test" could not be extended to a person whose statement was required to be recorded under Section 108 of the Act and the failure to give counsel's assistance is not violative of either Article 21 or Article 20 (2) or Article 20 (3) of the constitution. In that context, it was further held at page 247 that the purpose of inquiry under the Act and other similar statutes "will be completely frustrated if the whim of the persons in possession of useful information for the department are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them n adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company". The contention of Shri Thakur that fairness of judicial process requires that such statements given by the accused should be strictly, meticulously and minutely scrutinised as they emanate at the threat of person in authority and are inadmissible in evidence under Section 24, does not merit acceptance for the reason that the primary object of enquiry under the Act is to initiate proceedings for confiscation of the contraband and collection of excise duty and the persons acquainted with the facts are duty bound to speak truth or to give statement truthfully upon the subject respecting with the person is examined or made statement at the pain of prosecution for perjury or produce such document or other things. In the light of the legislative policy the question of unfairness or untrustworthy of process does not arise and such a plea cannot be given countenance or acceptance. Ramanlal Bhogilaal Shah & Anr. V/s. D.K. Guha & Ors. [(1973) 1 SCC 696] was cited in support of the contention that when the person summoned under Section 108 of the Act was in the company of the Customs Officer he was an accused and that, therefore, the appellant therein was entitled to the protection. That case is distinguishable from the present case. Therein, the appellant was arrested under the detention law. The Enforcement authorities had got information of the contraband. The search was followed by seizure of the documents. A case was registered on November 8, 1971 under Section 154 of the Code and on November 25, 1971 an order permitting further investigation was obtained from the Chief presidency magistrate. The FIR disclosed offence under Section 420, IPC and Section 423 of the FERA etc. When summons were issued on April 17, 1972, it was contended that he was an accused and that he could not be compelled to give evidence against himself violating Article 20 (3) of the constitution. On those

facts, it was held that testimonial compulsion was prohibited under Article 20 (3).

It would thus be clear that the object of the Act empowering Customs Officers to record the evidence under Section 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the provisions of the Act so as to take proceedings for further action of confiscation of the contraband or imposition of the penalty under the Act etc. By virtue of authority of law, the officer exercising the powers under the Act is an authority within the meaning of Section 24 of Evidence Act.

[1] Though the authority/officer on suspecting a person of having committed the crime under the Act can record his statement, such a person per force is not a person accused under the Act. [2] he becomes accused of the offence under the Act only when a complain is laid by the competent customs officer in the court of competent jurisdiction or magistrate to take cognizance of the offence and summons are issued. thereafter, he becomes a person accused of the offence. [3] A statement recorded or given by the person suspected of having committed an offence during the inquiry under Section 108 of the Act or during confiscation proceedings is not a person accused of the offence within the meaning of Section 24 of the Evidence Act. [4] Though the Customs Officer is an authority within the meaning of Section 24 of the Evidence Act, by reason of statutory compulsion of recording the statement or the accused giving voluntary statement pursuant to his appearing either after issuance of summons or after the appellant's surrender, such statement cannot be characterised to have been obtained by threat, inducement or promise. [5] The collection of evidence under Section 108 and other relevant provisions relating to search and seizure are only for the purpose of taking further steps for confiscation of contraband and imposition of penalty.6] The self-same evidence is admissible in evidence on the complaint laid by the Customs Officer for prosecution under Section 135 or other relevant statutes.

It is true, as pointed out by Shri Thakur, that PW-2 admitted in cross-examination that they treated the appellant as an accused and decided to prosecute the appellant. but the above evidence requires to be tested in the light of the above legal position. The assumption of PW- 2 that the appellant was an accused as on December 6, 1980, is erroneous, since as on that date on formal complaint had been laid against the appellant. Therefore, it cannot be considered that on December 6, 1980, the appellant was an accused of the offence under Section 24 of the Evidence Act.

Next question for consideration is: whether such statement can form the sole basis for convition? It is seen that, admittedly, the appellant made his statement in his own hand-writing giving wealth of details running into five typed pages. Some of the details which found place in the statement were specially within his knowledge, viz., concealment of the 200 biscuits in his earlier rented house till he constructed the present house and shifted his residence and thereafter he brought to his house and concealed the same in his compound; and other details elaboration of which is not material. The question then is: whether it was influenced by threat of implicating his wife in the crime which is the sole basis for the claim that it was obtained by threat by PW-2 and PW-5? In that behalf, the High Court has held that it could not be considered to be induced by threat that his wife will be implicated in the crime and accordingly disbelieved his plea. It is seen that admittedly after the appellant gave

his statement, he was produced before the magistrate though no complaint was filed and was released on bail. He did not complain to the magistrate that Ex. P-4 statement was given under inducement, threat or duress. It was raised only subsequently making accusations against PW-5, the Inspector of Customs. Therefore, obviously it was only an afterthought. The High Court, therefore, rightly has not given any weight age to the same. It is true that the Magistrate has given various reasons for disbelieving the evidence of PW-3, the panch witness who had also, at one point of time, indulged in smuggling. It is unlikely that PW-3 would bring 200 gold biscuits of foreign marking and conceal them in the compound of the appellant without appellant's knowledge for safe custody. It is not his case that he had facilitated PW-3 in concealing them in his compound. The place of concealment of the contraband is also significant at this juncture. It is just near and visible from the window of his bed-room through which he or family members could always watch anyone frequenting the place where the contraband was concealed. This fact becomes more relevant when we consider that after concealment of the contraband in the compound one would ensure that others having access to the compound may not indulge in digging and carrying away the same. As soon as the appellant and/or the members of his family had sight of such visitor or movement by others, they would immediately catch hold of such person or would charge them. Obviously, therefore, it would be the appellant who had concealed 200 gold biscuits of foreign marking in his compound at a place always visible from his bedroom window. Therefore, the High Court was right in its conclusion, though for different reasons, that Ex.P-4 is a voluntary statement and was not influenced by threat duress or inducement etc. Therefore, it is a voluntary statement given by the appellant and is a true one.

The question then is: whether the retracted confessional statement requires corroboration from any other independent evidence? It is seen that the evidence in this case consists of the confessional statement, the recovery panchnama and the testimony of PWs 2, 3 and 5. It is true that in a trial and proprio vigore in a criminal trial, courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC it is now well settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested whether confession is voluntary and truthful inculpating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in Bhagwan Singh V/s. State of Punjab [AIR 1952 SC 214, para 30]. If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily. If the Court believes that the confession was voluntary and believes it to be true, then there is no legal bar on the Court for ordering conviction. However, rule

of prudence and practice does require that the Court seeks corroboration of the retracted confession from other evidence. The confession must be one implicating the accused in the crime. It is not necessary that each fact or circumstance contained in the confession is separately or independently corroborated. It is enough if it receives general corroboration. The burden is not as high as in the case of an approver or an accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of given set of facts. The high degree of proof and probative value is insisted in capital offences.

In Kashmira Singh's case the co-accused, Gurcharan singh made a confession, The question arose whether the confession could be relied upon to prove the prosecution case against the appellant kashmira Singh. In that context, Bose, J. speaking for bench of three Judges laid down the law that the Court requires to marshall the evidence against the accused excluding the confession altogether from consideration. If the evidence do hors the confession proves the guilt of the appellant, the confession of the co-accused could be used to corroborate the prosecution case to lend assurance to the Court to convict the appellant. The Court considered the evidence led by the prosecution, de hors the confession of co-accused and held that the evidence was not sufficient to bring home the guilt of appellant Kashmira Singh of the charge of murder. The appellant was acquitted of an offence under Section 302 IPC but was convicted for the offence under Section 201 IPC for destroying the evidence of murder and sentenced him to seven years rigorous imprisonment. This decision was considered by a four-judge Bench in Balbir Singh V/s. State of Punjab [AIR 1957 SC 216] where in it was held that if there is independent evidence, besides the confession, the rule that the confession could be used only to corroborate the other evidences loses its efficacy. Therefore, it was held that if the retracted confession is believed to be voluntary and true, it may form the basis of a conviction but the rule of practice and prudence requires that it should be corroborated by independent evidence. Therein also, for the charges of capital offence, the trial court did not accept the confessional statement of co-accused containing inculpatory and self-exculpatory statement. The High Court reversed the acquittal and convicted the accused, accepting that part of the confessional statement of the accused which was corroborated from other evidence. This Court upheld the conviction and held that it is not necessary that each item of fact or circumstance mentioned in the confessional statement requires to be corroborated separately and independently. It would be sufficient if there is general corroboration. The ratio in Kashmira Singh's case was referred to.

In Hem Raj V/s. The State of Ajmer [1954 SCR 1133] a three-Judge Bench to which Bose, J. was a member, was to consider whether retracted confession of an accused could be corroborated from the material already in the possession of the police prior to the recording of the confession. Therein the confession was recorded under Section 164 of the Code during the committal proceedings but at the trial it was retracted. This Court held that the evidence already on record of the police could be used to corroborate the retracted confession.

In Haricharan Kurmi & Jogia Hajam V/s. State of Bihar [AIR 1964 SC 1184] a Constitution Bench was to consider as to when the confession of co-accused could be used as evidence under Section 3 of the Evidence Act. It was held that the confession of a co-accused cannot be treated as substantive

evidence. If the Court believed other evidence and felt the necessity of seeking an assurance in support of its conclusion deducible from the said evidence, the confession of the co-accused could be used. It was, therefore, held that the Court would consider other evidence adduced by the prosecution. If the Court on confirmation thereof forms an opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of the guilt of the accused. it is, thus, seen that the distinction has been made by this Court between the confession of an accused and uses of a confession of the co- accused at the trial. As regards the confession of the accused and corroboration to the retracted confession, in Girdhari Lal Gupta & Another vs. D.N. Mehta, Assistant Collector of Customs & another [1970 2 SCC 530] a Bench of two Judges considered and held that if the evidence of an investigating officer is found to be reliable, whether it can be used to corroborate the evidence depends on the facts of each case. I that case, relating to the offence under Foreign Exchange Regulation Act, it was held that the evidence of the investigating officer and other evidence could be used to corroborate the recoveries made of the Indian currency being exported. This Court upheld the conviction of the accused.

In Nishi Kant Jha vs. The State of Bihar [1969 (1) SCC 347], another Constitution Bench was to consider whether, when a part of the confessional statement is inculpatory and the other part exculpatory, the former point was admissible in evidence. It was held that the exculpatory part was inherently improbable and was contradicted by other evidence and was, therefore, unacceptable. The incriminating circumstances contained in the inculpatory part of the statement were accepted to confirm the conviction of the capital offence. The law laid down by a three-Judge Bench in Chandrakant Chimanlal Desai's case is not inconsistent with the above exposition of law.

It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base conviction. However, the prudence and practice require that Court would seek assurance getting corroboration from other evidence adduced by the prosecution.

In Naresh J. Sukhawani V/s. Union of India [(1995) Supp. 4 SCC 663] a two-Judge Bench [to which one of us, K. Ramaswamy, J., was a member] had held in para 4 that the statement recorded under Section 108 of the Act forms a substantive evidence inculpating the petitioner therein with the contravention of the provisions of the Customs Act as he had attempted to export foreign exchange out of India. The statement made by another person inculpating the petitioner therein could be used against him as substantive evidence. Of course, the proceedings therein were for confiscation of the

contraband. In Surjeet Singh Chhabra vs. Union of India [1997 (89) ELT 464], decided by a two Judge bench to which one of us, K. Ramaswamy J., was a member the petitioner made a confession under Section 108. The proceedings on the basis thereof were taken for confiscation of the goods. He filed a writ petition to summon the panch (mediater) witnesses for cross-examination contending that reliance on the statements of those witnesses without opportunity to cross-examine them, was violative of the principle of natural justice. The High Court had dismissed the writ petition. In that context, it was held that his retracted confession within six days from the date of the confession was not before a Police Officer. The Custom Officers are not police officers. Therefore, it was held that "the confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner". As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120-B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve.

In Harroom Hai Abdulla V/s. State of Maharashtra [AIR 1968 SC 832], for the offence of conspiracy punishable under Section 120-6 of IPC and Section 171-A of the Sea Customs Act, the question arose whether the confession of co-accused who died pending trial just before delivery of the judgment, could be used against a co-accused who died pending trial just before delivery of the judgment, could be used against a co-accused? This Court considered the evidence of an accomplice together with the statements of two accused recorded under the Act, viz., one Bengali and another Noor Mohammad. How and what evidence could be relied upon against the other accused was the question. One of the accused who gave the evidence was an accomplice. In that case, it was held in para 9 of the judgment that the "argument here is that the cautionary rule applies, whether there be one accomplice or more and that the confessing co-accused cannot be placed higher than an accomplice". On consideration of the evidence, this Court had held in para 13 that the "Customs authorities served notices upon various suspects and recorded their statements in answer to these notices. The statements of Kashinath (Ex. A) and Bengali (Ex. Z-27) were recorded on the 15th, the former by Karnik (P.W.24) and the latter by Rane (P.W.26). These statements were recorded simultaneously or almost simultaneously. The statement of Noor Mohammad (Ex. Z-17) was recorded by Randive (P.W.22) on August 19. As there was no gap of time between the statements of Kashinath and Bengali and the incident was only a few hours old, it is impossible that the officers could have tutored them to make statements which agree in so many details". On consideration of the evidence it was held that "although Noor Mohammad's statement was not used by the High

Court and we have reluctantly left it out of consideration also, "nothing was shown to us to "destroy the conclusion about the truth of accomplice evidence. If it was, we would have considered seriously whether we should not take it into consideration. Further Haroon himself was also served with a notice like others. He was unwilling to make a statement till he had seen what the others had said. This may well be regarded as peculiar conduct in a man who now claims that he was not concerned with the smuggling". The normal rule that accomplice's evidence requires corroboration on material particulars from independent evidence was not applied. Thus this Court had accepted the accomplice evidence and the statements of others were used to confirm the conviction. Normally mens rea is an essential ingredient of the crime but this Court in the case of offences punishable under Section 14 of the Food Adulteration Act or Section 7 of the Essential Commodities Act, had held that mens rea is not an essential ingredient in proof of statutory offences.

In State of Gujarat & Anr. V/s. Acharya D. Pandev & Ors. etc. [(1970) 3 SCC 183] while holding that even in statutory offences in certain circumstances, unless the statute excludes expressly or by necessary implication, mens rea is an essential ingredient. It was held that the offences under the Bombay Public Trust Act, 1950 were not of serious nature. It was held that mens rea was not essential ingredient for proving the commission of offences. In Director of Enforcement V/s. M.C.T.M. Corporation Pvt. Ltd. & Ors. [(1996) 2 SCC 471] a two-Judge Bench was to considered whether mens rea is an essential ingredient in the proceedings taken under Section 23 (1) (a) of the Foreign Exchange Regulation Act. It was held that mens rea is not an essential ingredient to establish contravention under Sections 10 (10 and 23 (1) (a) of that Act. It is not necessary in this case to broach further whether mens rea is an essential ingredient for proving the commission of the offence under Sections 135 of the Act or Section 85 and 86 of the Gold (Control) Act since none has raised such contention. What is required to be considered is whether voluntary statement, Ex. P-4 given by the appellant constitutes sole basis to prove the commission of the offence under Section 135 (1) (i) of the Act.

Deoman Upadhvaya's case (supra) relates to a statement recorded under Section 27 of the Evidence Act. The respondent therein was held to be a person accused of offence of commission of crime. The respondent subsequently turned out to be the accused. Therefore, the Constitution Bench held that person who gave the statement to the police officer investigating into the offence and also gave information leading to the discovery of the contraband, on those facts. must be deemed to have surrendered himself to the police and that he being in the custody, gave the statement leading to discovery of incriminating contraband within the meaning of Section 27 of the Act. Accordingly, it was held that the evidence was inadmissible. The ratio therein has no application to the facts in this case.

In Sevantilal Karsondas Modi V/s. State of Maharashtra & Anr [(1979) 2 SCR 1160], a two-Judge bench concluded on the facts in that case that the statement recorded of the appellant-accused therein was hit by Section 24 of the Evidence Act for the reason that one of the accused tried along with the appellant was found to have sustained grievous injuries while he was in custody of the police. Moreover, the house from which the contraband was recovered was in joint possession of others along with the appellant. This Court, therefore, drew the inference that the statement was not voluntary. This case also has no application to the facts in the present case. Satbir Singh's case also

is not of any help to the appellant. Therein, the confession was recorded by a superior police officer questioning the accused separately on several dates and ultimately it was recovered at the end. Under those circumstances, it was held that the confession was not voluntary. That case relates to the prosecution for offences under Section 364 and 302 read with Section 120-B, IPC. The ratio therein is equally inapplicable to the facts in the present case.

It is seen that the contraband of 200 gold biscuits of foreign marking concealed in a wooden box and kept in the pit in the compound of the appellant was recovered at 9.00 a.m. on December 6, 1980 in the presence of Panch (mediator) Witnesses including P.W.3. This is proved from the evidence of PWs 2, 3 and 5. There was nothing for PW-3 to speak falsehood against the appellant who is a friend of him. PW-2 and 5 also withstood the grueling cross-examination. There is nothing to disbelieve their evidence. The appellant herein made statement under Section 108 at 1 P.M. on December 6, 1980, i.e., after four hours. It is unlikely that during that short period PW-2 and 5 would have obtained the retracted confession under Ex. P-4 in his own handwriting running into 5 typed pages under threat or duress or promise. No doubt the wealth of details by itself is not an assurance of its voluntary character. The totality of the facts and circumstances would be taken into account. On a consideration of the evidence, the High Court accepted that Ex. P-4 is a voluntary and true confessional statement and accordingly it convicted the appellant of the offences. It is seen that Ex. P-4 was given in furtherance of the statutory compulsion and the appellant made statement in unequivocal terms admitting the guilt. It is seen that in barkat Ram's case, this Court accepted the retracted confessional statement and upheld, on that basis, the conviction. In vallabhdas Liladhar's case and also in Rustom Das's case the retracted confessional statement found basis for conviction and in the latter the recoveries were relied as corroborative evidence. In Haroom Abdulla's case, this Court used the evidence of co-accused as corroborative evidence.

It is true that in criminal law, as also in civil suits, the trial Court and the appellate Court should marshal the facts and reach conclusion, on facts. In a criminal case, the prosecution has to prove the guilt beyond doubt. The concept of benefit of doubt is not a charter for acquittal. Doubt of a doubting Thomas or of a weak mind is not the road to reach the result. If a Judge on objective evaluation of evidence and after applying relevant tests reaches a finding that the prosecution has not proved its case beyond reasonable doubt, then the accused is entitled to the benefit of doubt for acquittal. The question then is: whether the learned Single Judge of the High Court has committed any error of law in reversing the acquittal by the Magistrate. Not every fanciful reason that erupted from flight of imagination but relevant and germane requires tested. Reasons are the should of law. Best way to discover truth is through the interplay of view points. Discussion captures the essence of controversy by its appraisal of alternatives, presentation of pros and cons and review on the touchstone of human conduct and all attending relevant circumstances. Truth and falsity are sworn enemies. Man may be prone to speak falsehood but circumstantial evidence will not. Falsity is counted from man's proclivity to faltering but when it is tested on the anvil of circumstantial evidence truth trans. On scanning the evidence and going through the reasoning of the learned Single Judge we find that the learned Judge was right in accepting the confessional statement of the appellant, Ex. P-4 to be a voluntary one and that it could form the basis for conviction. The Magistrate had dwelt upon the controversy no doubt on appreciation of the evidence but not in proper or right perspective. Therefore, it is not necessary for the learned Judge of the High Court to

wade through every reasoning and give his reasons for his disagreement with the conclusion reached by the Magistrate. On relevant aspects, the learned Judge has dwelt upon in detail and recorded the disagreement with the Magistrate and reached his conclusions. Therefore, there is no illegality in the approach adopted by the learned Judge. WE hold that the learned Judge was right in his findings that the prosecution has proved the case based upon the confession of the appellant given in Ex.P-4 under Section 108 of the Evidence Act and the evidence of PWs 2, 3 and 5. The prosecution proved the case beyond doubt and the High Court has committed on error of law.

Section 135 provides that "without prejudice to any action that may be taken under the Act", (emphasis supplied) if any person is, in relation to any goods in any way, knowingly concerned in any prohibition imposed under the Act for the time being in force with respect to such goods or acquires possession of any goods which he knows or has reason to believe are liable to confiscation under Section 111, then he shall be liable to conviction under Sub-section (1) thereof and shall be liable to punishment under subsection (2) thereof. Similarly, under the Gold (Control) Act, which was in operation at the relevant time, whoever in contravention of the provisions of that Act or order made thereunder, among other things, owns or has in his possession, custody or control any primary gold, is liable, without prejudice to any other action that may be taken under that Act, for punishment of imprisonment prescribed for the purpose. Under Section 86, whoever fails to make a declaration enjoined under sub-section (12) of Section 16 without any reasonable cause, is liable to punishment of imprisonment prescribed for the purpose. The offences are proved from the evidence.

Having reached the finding that the appellant has committed the offences under Section 135 (1) (i) of the Act and Section 85 (1) (a) and 86 of the Gold (Control) Act, 1968 we think that instead of being committed to jail, the appellant should be sentenced to pay fine of Rs. 10,000/- and Rs. 5,000/- respectively for the two aforementioned offences, within 4 months from today. In default, he shall undergo imprisonment for a period of 2 months and 1 months respectively which are directed to run consecutively.

The appeal is accordingly allowed to the above extent of modification and the sentences imposed by the High Court stand modified accordingly.