

Chander Kumar Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-28-1989

Reported in : (1990)LC225Tri(Delhi)

Appellant : Chander Kumar

Respondent : Collector of Customs

Judgement :

1. This is an appeal under Section 129A(1) of the Customs Act, 1962 hereinafter referred to as the Act against the order-in-appeal No.403-DLH/85 dated 1.5.85 passed by the Collector of Customs (Appeals) New Delhi confirming the order of the Deputy Collector of Customs, New Delhi in his order-in-original No. 59/80 dated 11.2.1981 in which the appellant was imposed penalty of Rs. 20,000/- under Section 112 of the Act as a result of confiscation of 430 wrist watches and scooter. A redemption fine of Rs. 2500/- has been imposed on the seizure of the scooter.

2. The facts of the case as described in the order-in-original are that on 20.8.79, the officers of the Customs (Preventive) Branch of the Central Excise Collectorate, Delhi acting on an information, searched the residential premises of Shri Sohanlal Narula, Watch dealer, situated at B-112, Amar Colony, Delhi. Immediately before the commencement of the search of the aforesaid premises, the appellant is alleged to have entered this premises from the back door carrying a brown rexine bag in his hand. On seeing the Customs Officers, the appellant retraced his steps and tried to slip away with the said rexine bag on the Lamby scooter, which he had parked just near the door before entering the said premises. He was overpowered

by the Customs Officers. The bag was searched in the presence of two independent Panch witnesses which resulted in recovery of 430 Omex Electronic watches of foreign origin valued at Rs.73,100/-. On demand, the appellant could not produce any evidence showing the lawful import/acquisition/purchase or possession of the said 430 electronic watches of foreign origin. The watches and the rexine bag and scooter were seized under Section 110 of the Act on reasonable belief that the same were liable for confiscation under the Act. The documents pertaining to the said vehicle were recovered from its dicky which was also seized. A Panchnama was drawn at the spot in respect of the seized items.

3. Then the house of Shri Sohanlal Narula was searched in the presence of two independent witnesses and it resulted in recovery of Indian currency of Rs. 10,000/-which was also seized for confiscation under the Act on the belief that the said currency represented the sale proceeds of smuggled watches. Subsequently the shop of Shri Sohanlal Narula located at No. 57, Lajpat Rai Market, Delhi was searched as a follow up action which resulted in the recovery and seizure of ten watch movements and two watches of foreign origin collectively valued at Rs. 1000/-. On demand, the said Sh. S.L. Narula could not produce any evidence to show the lawful import/acquisition/purchase/possession of the said watch movements and watches of foreign origin. The said ten watch movements and two watches of foreign origin were seized under Section 110 of the Act on the belief that they were liable for confiscation under the Act.

4. The statement of the appellant was recorded under Section 108 of the Act on 20-8-1979 immediately after the recovery and seizure of 430 wrist watches of foreign origin from the alleged possession. According to the Department, the appellant admitted having been involved in a smuggling case in March, 1978 in which case, one hundred watch movements of foreign origin and Indian currency of Rs. 20,000/- had been seized. In his statement, the appellant is stated to have admitted the following having recovered these 430 seized watches of foreign origin from Shri Balwinder Singh a motor part dealer in Nepal; that he had brought the said watches for delivery to Shri Varinder son of Sh.

Sohanlal at his House B-112, Amar Colony, New Delhi as arranged earlier with Sh. Varinder Kumar that he used to supply 40 to 50 smuggled watches to Shri Varinder every week; that he used to receive smuggled watches from Sh. Balwinder Singh every week with prior arrangement; that on 20-8-1979 he took 430 smuggled watches in the dark brown hand bag placed in the basket fixed on his Lamby scooter No. DEJ-3736 for delivery to Shri Varinder Kumar at his house at B-112, Amar Colony, New Delhi; that he entered the said house from the back door of the house holding dark brown hand bag containing smuggled 430 watches; that he tried to slip away when he saw the Customs officer there; that he did not stop at the bidding of the Customs officers; that he was overpowered by the Customs officers after a scuffle; that the search of his hand bag resulted in recovery of 430 smuggled watches which were seized by the Customs officers, that he did not have any bill or vouchers in respect of the seized watches which had been smuggled and that he knew that to purchase, sell or deal in smuggled watches was an offence.

5. The Customs officers have said to have taken the statement of Sh.

Varinder Kumar under Section 108 of the Act on the same day i.e. on 20-8-1979 who is to have also admitted about the smuggling activity of the appellant and his agreement with him to purchase the smuggled watches. The statement is alleged to be as follows - That he was working in the shop of his father for the last two years; that they had a shop situated at No. 57, New Lajpat Rai Market, Delhi under the name and style of M/s. Golden Watch House; that he met the appellant four or five months prior to seizure; that he came to an understanding with him for purchase and sale of smuggled watches; that he used to receive 175-180 smuggled watches from him every month; that he used to dispose of such watches in the market in retail sale; that his dealing in smuggled watches was not known to his father; that on 18-8-1979, the appellant had told him that he would be receiving a consignment of smuggled watches in a day or two; that as arranged earlier on 20-8-1979, the appellant came to his house at B-112, Amar Colony, New Delhi to deliver the smuggled watches to him; that he tried to run away on seeing the Customs officers and he was apprehended by the Customs officers with great difficulty after a scuffle; that on search of the bag of the appellant, it resulted in

recovery of 430 Omex electronic watches of foreign origin; that at that stage, he was escorted by the Customs officers to his shop at No. 57, New Lajpat Rai Market, Delhi for search which resulted in recovery of 10 watch movements and 2 watches of foreign origin which had been hidden underneath the gunny bags in the corner of the shop; that he was aware that the said watch movements and watches recovered from his shop were smuggled ones; that he did not have any bill or voucher in respect of the said seized goods which he had purchased from Shri Jagdish of Amritsar whose address was not known to him; he was aware that dealing in smuggled goods was an offence. That the Indian currency of Rs. 10,000/- seized from his house belonged to him and that money was used for making payment towards the smuggled watches; that he was to pay to the appellant for the purchase of smuggled watches.

6. Shri Sohanlal father of Shri Varinder Kumar in his statement dated 30-8-1979 recorded under Section 108 of the Act submitted inter alia that he was engaged in the watch repair for the last 12 years at his shop No. 57, New Lajpat Rai Market, Delhi and that the shop was looked after by his son for the last 5-6 months as he was keeping indifferent health; that on 20-8-1979, the Customs officers searched his house at B-112, Amar Colony, New Delhi; that just when the search was to start the appellant herein, holding a dark brown hand bag, entered from the back door of his house; that the Customs officers tried to stop him but he tried to run away and he was apprehended by use of force with great difficulty after a scuffle; that the hand bag of the appellant was searched, as a result 430 smuggled watches of foreign origin were recovered from the said hand bag; that the appellant was frequent visitor of the house to meet his son; that he did not know whether his son used to receive smuggled watches from the appellant; that the amount of Rs. 10,000/- in Indian currency recovered from his house belonged to his son; being a retired man he had no connection with the business.

7. It is the case of the Department in the panchnama that they had taken panch witnesses namely Sh. Anil K. Gupta and Sh. Bhupinder Singh to H.No. B-112, Amar Colony, Lajpat Nagar, New Delhi, the residence of Sh. Sohanlal Narula to witness the search of the said premises. The search authorisation had been shown to Sh. Sohanlal Narula and as the search was going to start, a man

wearing blue shirt entered after parking his scooter in the backside of the house. He was carrying a dark brown rexine hand bag. On seeing the Customs officer, the said man retreated hastily and tried to flee with the said rexine hand bag. The said person was overpowered by the Customs officer after a scuffle. On enquiring, the said person gave his identity as Sh. Chander Kumar resident of B-35, Motinagar, New Delhi. The search of the rexine hand bag which got torn in the melee resulted in the recovery of 430 wrist watches Omex - Electronic without chain made in Hongkong of assorted colours and shapes valued at Rs. 73,100/-. On demand the said Shri Chander Kumar could not produce any evidence showing the lawful import/purchase/acquisition/possession/carriage of the said electronic wrist watches recovered from him. The panchnama further stated about the liability for confiscation of these watches and the scooter. It also stated the recovery of documents of scooter licence, insurance etc. from the dicky of the scooter and of its seizure. It stated of packing of the watches in two packets and also of recovery of seizure of cash in Indian currency of Rs. 10,000/- from the residence of Sh.

Sohanlal Narula. The Panch witnesses have stated to have signed the panchnama after it was read over and explained in Hindi and they having accepted as correct. The Panchnama was prepared by Sh. C.L. Talwar, Inspector and it has been signed by several other persons.

8. The Panchnama commences with the mention of two persons namely Shri Anil K. Gupta and Sh. Bhupinder Singh only and reads as, "We the above-mentioned Panchas having been called by the Customs Preventive party to House No. B-112, Amar Colony, Lajpat Nagar, New Delhi of Sh.

Sohanlal Narula to witness the search of the said premises". But however, we find some witness having been examined before the Deputy Collector (Customs) during the course of proceedings as Panch witnesses namely Sh. Jaikishan. He has stated on cross-examination that he went as a panch witness to the premises at B-135 for the purpose of search.

He was called from the shop which is behind the residential premises of Chander Kumar. He owns a bakery. He was called around 10/11 A.M. It all took about 10 to

15 minutes to complete the search. The other Panch witness was also called with him. The other witness remained there all the time during the search. Sh. Chander Kumar never came there at B-135 his residential premises and he denied the suggestion that Chander Kumar had come there during the search.

9. Another witness Sh. Tirlok Nath has also been examined as Panch witness before the Deputy Collector who has stated in his cross-examination that the search of Sh. Chander Kumar's house took place at 10/11 A.M. on 20-8-1979. He came later on at about 4 to 5.00 P.M. in the evening when he was handcuffed. He further stated that Sh.

Chander Kumar was aged about 35-36 years old. His height was 5 feet 5 inches and fair complexed.

10. The Panch witnesses Sh. Anil K. Gupta and Sh. Bhupinder Singh were also cross-examined before the Deputy Collector. Their statements are found to be in difference to the one recorded in Panchnama. A summary of their statement in cross-examination is recorded herein below.

11. Sh. Anil K. Gupta has stated that he met the officers in Amar Colony Market. The officers were standing outside the car on the roadside. From there, they went in the car to the place to be searched which was at a distance of about half a furlong. He had appeared for the first time as a witness. He could not dishonour the request of Sh.

Talwar who telephoned Sh. Bhupinder Singh to come along with him. He has stated that the following narration in the panchnama is not correct "as the search was going to start, a man wearing blue shirt entered after parking the scooter in the backside of the house. He was carrying a dark brown rexine handbag. On seeing the Customs officer the said man retreated hastily and tried to flee with the said rexine bag" (underlined by us). He has also stated that further narration in the panchnama which is attributed to him that "watches and other goods valued at Rs. 73,100/-" is not his version as he does not deal in watches. He has stated that all the watches were sealed in the same bag (underlined by us). He has stated that he did not remember who wrote the panchnama whether it was a clean shaven

person or a sikh. He did not remember the number of copies of panchnama prepared. He has stated that the person carrying the rexine hand bag was aged about 20 to 25 years thin built dark impression height about 5'.4" - 5'.5".

12. The statement of Sh. Bhupinder Singh another Panch witness on cross-examination before the Deputy Collector was also recorded. He has stated that he came to his shop at about 9.45 A.M. when his brother Sardar Hardit Singh told him that he had received a telephone call from Talwar and that he should reach Amar Colony Market with his brother and another person. His brother did not tell him that Sh. Talwar had particularly asked for Sh. Anil Kumar Gupta. He had not signed as a witness but his brother had signed as witness in Gold Control and Customs cases for about 25-30 occasions. He has stated that officers were standing on the road in Amar Colony market when they reached there. From there, they went to the house to be searched and it took about 3 or 4 minutes. He has further stated that "when I went out on the street some watches were lying on the road and some were in the rexine dark brown bag. The watches scattered were also put in the bag by the officers. All the watches which numbered 430 were contained in the bag. The length of bag as far as I remember is between 1- 1/2 to 2" and the height is approximately also the same. All the 430 watches were sealed in the same bag. It has been incorrectly attributed to me and the other witness in the panchnama as the search was going to start the man wearing blue shirt entered after parking his scooter in the backside of the house. He was carrying a dark brown bag. On seeing the Customs officers the said man retreated hastily and tried to flee.

Panchnama was written by Sh. C.L. Talwar". (Underlined by us).

13. Sh. S.D. Khanna, Superintendent Customs, Sh. C.L. Talwar, Inspector, Sh. K.L. Yadav, Inspector, Sh. Kajla, Inspector, Sh. B.R.Solanki, Sh. S.N. Kapoor, Inspector had been cross-examined before the Deputy Collector Customs. Their statements reveal inconsistencies, contradictions and inaccuracies. It is necessary for determining this case to see a few of it from these statements. Sh. S.D. Khanna, Supdtt.

has stated that they entered the premises of Sri Sohanlal at 10.30 A.M.He had attempted for surveillance of the premises as somebody was expected to bring the

contraband to the premises to be searched. Sh.

Chander Kumar was not seen coming to the premises during the period of surveillance. He recorded the statement in the early hours of the night on 20th after he had been brought from Amar Colony to Customs office.

He did not remember whether summons were served on him or not. Sh. S.D.Khanna however, denied all other motives for involving the appellant in the case. Sh. K.L. Yadav, Inspector in his cross-examination has stated that the residential premises at B-35, Moti Nagar (of the appellant) was conducted at 11.00 A.M. on 20-8-1979. Search was prepared in his presence and it took five to seven minutes in forming the raiding party. He denied the suggestion in cross-examination of the presence of Sh. Chander Kumar at the time of raid of his residence in the morning of 20-8-1979 and that he had been taken away by two of the officers to Amar Colony.

14. Sh. K.S. Kajla, Inspector admitted having prepared the Panchnama at 12.00 to 1.00 P.M. during the day. He admitted that neither any officer nor any witness except for Sh. C.L. Talwar seeing Chander Kumar (appellant) shouting at him from outside. He stated that it was correctly recorded in Panchnama that the officers and the witnesses saw a man wearing blue shirt entering after parking the scooter in the backside of the house and he was carrying a dark brown rexine hand bag and on seeing the Customs officer, the said man retreated hastily and tried to flee with the said rexine hand bag and the said person was overpowered by the Customs officers after a scuffle. When officers and witnesses went outside, Mr. Talwar and Sh. Chander Kumar (appellant) were already garbling and the scooter was parked nearby.

15. Shri B.R. Solanki, Inspector in his cross-examination submitted that immediately after the search warrants were shown to Sh. Sohanlal that voices of Mr. Talwar from outside were heard inside the premises.

Mr. S.D. Khanna gave directions for follow up action for search of other premises. He has submitted that the party came back to the Customs House at about 6 to 7 P.M. Sh. Chander Kumar was brought to the Customs office straight from Amar

Colony.

16. The most important witness to have been cross-examined is Sh. C.L.

Talwar, Inspector of Customs. It is interesting to note from his statement that several contradictions have arisen. He has stated that they were to search Sh. Sohanlal in Amar Colony to look for smuggled watches. The party met public witness at market. He had telephoned somebody in Chandni Chowk to send two responsible persons. He has submitted that he was not aware of the requirements of law that search of a premise has to be conducted in the presence of witnesses from the locality. He has submitted that the appellants had already been appraised about a year earlier to this incident and he knew him by his name and face. In the earlier case, some watch movements and Indian currency had been seized. He has denied the suggestion about the appellant complaining against him and some other officers of the Customs to an MO of the fact that he had been falsely implicated in that case and had demanded Rs. 20,000/-. He had denied the suggestion that the complaint of that MP was forwarded to the Collector of Customs, New Delhi and to the then Minister of State for Finance. He denied the suggestion that the staff had entertained and planned to involve him in this case. He denied the suggestion that 430 watches were recovered from Sh. Sohan Lal on search and this was considered as an opportunity to involve him. He further denied the suggestion that as a part of the plan few Customs officers went to the house of Chander Kumar (appellant) got him with in his scooter to Amar Colony and foisted the recovery of watches on him. He submitted that he intercepted Sh. Chander Kumar within 10 to 15 minutes of his entering the premises. He has submitted that in the scuffle that he had with the appellant, he had got injury on his right arm. He had submitted that the appellant was taken to the Court at 2.00 PM on next date i.e. on 21st. He had read the bail application of the appellant and in that the appellant had mentioned that he was falsely being implicated and that he had been beaten by Customs officers. The appellant had also mentioned that he had injuries as a result of such beating and that he may be got medically examined. His request for medical examination was allowed by the court. He stated that he had made a complaint against the appellant at Lajpat Nagar Police Station on the evening of 21st August but he denied that he did so after seeing

these allegations in the bail application. He has Stated that he did not know that as per Police challan, the place of incident of scuffle is half kilometer away from the residence of B-112, Amar Colony. He has stated that the appellant was brought to the Customs House straight from Amar Colony.

17. The Dy. Collector of Customs heard the counsel for the appellant as well as Sh. Vijendra Kumar who had been served with the show cause notice as that of the appellant. The Counsel for Sh. Vijendra Kumar as well of the appellants, had brought forth in writing their submissions wherein they had drawn to the attention of the Dy. Collector of Customs of various inconsistencies, irregularities, contradictions in recording the statements.

18. The Dy. Collector of Customs had also got the demonstration of the seized watches being placed in the seized bag was done before him. The minutes of that demonstration revealed that the entire 430 watches could not contain itself in the seized bag as the zip of the bag could not be closed. The Customs officer had recorded that it was pointed out by him to them that 150 loose watches had been put inside the bag in a haphazard manner alongwith 14 packets and if they were to be packed orderly and systematically, the inter watch space would get reduced and all the 430 watches could be accommodated in the said seized bag.

19. The Dy. Collector after affording to the parties of this opportunity of cross-examination of the witnesses as well as the demonstration of watches being placed in the seized bag, passed the order-in-original, convicting the appellant and the said Sh. Varinder Kumar with a penalty of Rs. 20,000/- on each of them. However, he ordered the release of Indian currency under seizure. He acquitted Sh.

Sohanlal as he did not find any evidence on record of his personal involvement in the offence. The scooter which was confiscated, was however, released on payment of redemption fine of Rs. 2500/-. The watches were confiscated under Section 111(p) of the Act. Both Sh.

Varinder Kumar and appellant appealed to the Collector, who by his common impugned order, had set aside the personal penalty of Rs. 20,000/- imposed on

Sh. Varinder Kumar but however, confirmed the penalty on the appellant.

20. We do not wish to go into the reasoning of both the authorities below in coming to the conclusion of the charges made out in the show cause notice but however, we have extracted in great detail the various statements of the Panch witnesses, officers of the Customs Department and alleged admission of the appellant and Shri Vijender Kumar. From these extractions and gravity of the offence on record, we have to proceed to examine as to whether the charges against the appellant have been proved or not.

21. Shri Akshay Anand, Advocate, for the appellant, argued the case.

Miss Renuka Mann, Departmental Representative defended the Department in this case. Shri Akshay Anand took us through the entire record and pointed out several inconsistencies of the statement of Panch witnesses in cross-examination with that of the original statements made by them in panchnama. It was brought to light that the statements in panchnama had been resiled by a few panch witnesses and he further submitted that some of the statements recorded in the panchnama had not been stated by them. He has also shown to us that one witness Shri Jaikishan had stated that at 10/11 A.M. on 20-8-1979, he had been a witness to the search of the house of the appellant and of his arrest. This has been corroborated by another panch witness Sh. Tirlok Nath. Further this witness has also stated that the appellant had been brought to his house under 'handcuffed at 5 to 6 P.M. This operation of the searches of the appellant's house at 10 to 11 A.M. on 20-8-1979 has also been corroborated by Sh. Yadav, Inspector of Customs. In his statement, he has submitted that 3 or 4 officers were also present in the search party. He has further submitted that Sh. Chander Kumar was not present there. He had gone to Amar Colony. Shri Anand Advocate has further pointed out to us grave discrepancies from the statements given in cross-examination of the panch witnesses Sh. K. Gupta and Sh. Bhupinder Singh. The counsel has brought to our notice that in the cross-examination of Sh. A.K. Gupta, who has described the appellant's age being between 20-30 years, height 5'3" to 5'4" which is incorrect.

Hence, his testimony is unbelievable. The counsel further argued that Sh. Bhupinder Singh had stated in his statement that he had seen watches lying on the road and some in the rexine bag. The watches were put in the bag by the officers. The length of the bag was from 1 1/2' to 2'. The counsel has pointed out to us from the statement of this witness that the panchnama was prepared by Sh. C.L. Talwar while in fact, panchnama had been prepared by Inspector Kajla. The counsel after taking us through the statement of Sh. S.D. Khanna and with that of Sh.

C.L. Talwar and also with the statement of others, has pointed out that there were inconsistencies and irregularities in the statements which cannot be relied. The counsel further submitted that the Department was aware of the appellant's involvement in another case and in order to involve him further, they had implicated him in this case. The counsel further argued that the Superintendent in his statement had admitted having recorded the statement of the appellant in the early hours of the night of 20th August. The counsel further pointed out that from the statement of Sh. Talwar the existence of irregularities between his statement with that of the panch witnesses. He has also pointed out to us of the fact that these seized watches could not be placed in the seized bag. He has pointed out to us from the panchnama that the watches were said to have been packed separately and 218 watches were repacked which throws doubt on the watches being recovered from the bag. He pointed out to us that panch witnesses had stated the arrest of appellant from his house in the morning of 20-8-1979 and hence his going on scooter with watches to the Amar Colony to the house of Sh.

Varinder Kumar in the morning of 20-8-1979 is impossible and both things could not have happened simultaneously. He further submitted that it was impossible for any person to carry 430 watches in a small bag on a scooter and would sell the same for such a low price. Further no person would straightaway walk inside the net despite seeing so many officials and vehicles near the house. He has argued that the appellant was taken from his house which is very evident and clear from the records. The appellant was taken to the Amar Colony where the officers had already seized these watches and he was implicated in the case and was subjected to torture as is seen from the statement of the Inspector Sh. C.L. Talwar

and statement recorded during the night by the Superintendent Sh. S.D. Khanna.

22. Miss Renuka Mann argued the case for the Revenue and defended the Department. She pointed out that the appellant had not placed on record his resilement from confession made by him and hence in view of his own confession and that of Varinder Kumar and Sohanlal Narula, the case of the Department stands proved.

23. We have heard both the sides, gone through the records and the evidence minutely. The questions that arise for our consideration are - (i) Is there sufficient evidence against the appellant for charging him? (ii) Whether the smuggled watches were seized from him and can the panch witnesses be relied 24. We have extracted in great detail the alleged confessional statement of appellant, Sh. Varinder Kumar and that of Sh. Sohanlal. We have also seen the statements of the panchnama and also that of the various statements of the witnesses including the statement of the officers of Department and panch witnesses who were examined before the Dy. Collector. As has been pointed out to us by the counsel for the appellant, indeed, there have been very grave discrepancies, resilement and contradiction. One thing is clear that on 20-8-1979 at about 10 A.M. the appellant's house had been raided as per the panch witnesses Sh. Tirlok Nath and Sh. Jaikishan and Inspector Sh. K.L. Yadav. If this statement is to be believed, then the other story of the appellant being at Amar Colony carrying 430 watches in the rexine bag in the scooter gets doubtful for reasons noted supra. Sh. Tirlok Nath has correctly described the person as being 35 years, height being 5'5" and fair complexed. The other panch witness Sh. Jaikishan supports this witness. Inspector Sh. K.L. Yadav has categorically stated that the residential premises at B-35, Motinagar i.e. appellant's residence was searched at 11 A.M. on 20-8-1979 and he has stated that they were a party of 3 officers and the search was prepared in his presence. Sh.

Tirlok Nath the panch witness stated that the appellant was brought in the evening at 4 or 5 P.M. to his house handcuffed. This part of the statement has not been resiled, contradicted, withdrawn by the Department. It is the case of the Department that after the appellant was apprehended at Amar Colony and after he

had given his statement, the statement of Sh. Varinder Kumar, Sh. Sohanlal were recorded.

Thereafter the shop of Sh. Varinder Kumar was searched. The adjudication officers in their orders have not stated about the raid and arrest of appellant from his house on 20-8-1979 and no findings recorded on this aspect of the matter. The lower authorities have not discussed this portion of the evidence at all, which all the more raises suspicion in our minds with regard to the genuineness of this case. It is possible that only after Sh, Chander Kumar's house was searched, he might have been taken to Amar Colony for further searches or it could also be possible that the watches might have been recovered by the appellant. It is not clear as to why the authorities below have not discussed the case from this point of view. The lower authorities have remained silent on the evidence of search and alleged arrest of appellant in his house on the morning of 20-8-1979. We have extracted the inconsistencies in the investigation and in the search, raid, recording of panch witnesses and proceedings before the lower authorities. When the panch witnesses Sh. Anil Kumar and Sh. Bhupinder Singh gave statements against the Department, the Department should have declared them as hostile witnesses and they should have been cross-examined by the Department. It is unfortunate that the entire proceedings have come in for serious criticism at the Bar. The Department has to place clear and acceptable evidence. Where panch witnesses resile before adjudicating authorities, they have to be declared as hostile witnesses and Department should be given opportunity to cross-examine them and show to the adjudicating authorities that the panch witnesses have deliberately resiled with a view to help the accused persons and that they are not standing by truth and are not helping in the administration of justice. The adjudication authorities should take all the materials on record, while coming to the final conclusion in the matter and give benefit of doubt wherever the testimony is not reliable or doubtful.

25. From the reading of the minutes recorded by the Collector, with regard to the demonstration of watches being kept in the rexine bag, it is very clear that the bag could not accommodate all the 430 watches.

The Collector of Customs had drawn an inference that if these watches were systematically arranged, then the inter-watch space would be reduced and the bag would have contained all the watches. Such an inference cannot be drawn. If the Collector felt that by systematic arrangement of the watches they could be arranged in the bag, then nothing prevented him from having it done to satisfy himself as to whether in fact, seized watches were carried in the seized bag or not as alleged by the Department.

26. There is serious contradiction between the panch witnesses with regard to the manner in which the watches were kept in the bag. There is serious contradiction in the manner in which the incident at Amar Colony has appeared to have taken place as noted by us. There is also serious contradiction with regard to the identification of the appellant by the panch witnesses and also with regard to the person who has recorded the panchnama.

27. Reading the entire evidence, it becomes clear that the panchnama had not been prepared on the spot and it is doubtful whether the appellant did go to the Amar Colony on the scooter with the bag containing the seized watches. It is also unbelievable from the statement of Sh. Varinder Kumar that he could purchase 430 watches with an amount of Rs. 10,000/- kept by him. It is also unbelievable that Sh.

Sohanlal Narula is said to be unaware of the activities of his son Sh.

Varinder Kumar. A serious doubt arises in the mind with regard to Sh.

Sohanlal Narula indulging in the smuggling of watches. When he is alleged to be in possession of watch movements as seized from his shop, why then he was acquitted by the Collector (A)? The Department having also not come in appeal against setting aside the personal penalty against Sh. Varinder Kumar, it raises a serious doubt in our mind as to the genuineness of this case.

28. After going through the entire evidence, we are unable to agree with the reasoning of the lower authority. As has been made out from this case, we see that the officers were having information with regard to Sh. Sohanlal Narula only.

No information had been received with regard to Sh. Chander Kumar, appellant, carrying to the house of Sh.

Sohanlal smuggled watches, as is very evident from the show cause notice and the pleadings narrated in the order-in-original read alongwith the statement of Superintendent and Inspectors. The officers have come in for severe criticism in this case. This criticism is fair and well founded, as the appellant appears to have been framed up in this case.

29. We are constrained to set aside the personal penalty imposed on the appellants in this case. If the penalty and redemption fine have been paid, the same shall be reimbursed within two months from the receipt of this order.

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