

Hari Chand Etc Vs. State

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Court : Delhi

Decided On : May-02-1974

Reported in : 1977CriLJ262; ILR1974Delhi706

Judge : Prithvi Raj, J.

Acts : [Evidence Act, 1872](#) - Sections 10, 25, 30 and 135; [Customs Act, 1962](#) - Sections 108; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204(1A) and 561A

Appeal No. : Criminal Revision Appeal Nos. 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392 and 393 of 1971

Appellant : Hari Chand Etc

Respondent : State

Advocate for Pet/Ap. : Ram Jethmalani,; K.M. Mehta,; N.C. Chawla,;

Judgement :

Prithvi Raj, J.

(1) This order will dispose of Criminal Revision Nos. 382 to 393 of 1971, Cr. M.(M) 136 of 1972, Cr. Revisions 114 and 85 of 1972. Since common questions of law are involved in these revisions besides most of the facts being common, it would be appropriate to dispose them of by a single judgment.

(2) Relevant facts necessary for disposal of the petitions are as under:-

SHRIA. L. Nanda, Assistant Collector of Customs, filed a complaint under section 120-B of the Indian Penal Code read with section 135 of the [Customs Act, 1962](#), and section 23(1-A) of the Foreign Exchange Regulation Act; (ii) section 135 of the [Customs Act, 1962](#); (iii) section 23(1-A) of the .Foreign Exchange Regulation Act; (iv) section 135 of the [Customs Act, 1962](#), read with section 109 and/or 114 of the Indian Penal Code and (v) section 23(1-A) of the Foreign Exchange Regulation Act read with section 109 and/or 114 of the Indian Penal Code against forty-three persons including the petitioners (herein called 'the accused') on the following allegations.

(3) The Delhi Customs in pursuance of an information on 18th October, 1964, searched premises No. D-115, defense Colony, Delhi. At the time of search the accused Akhtar Ishtiaq, Mehboob Ali, Jasbir Singh, Kartar Singh and Mohd. Iqbal were found present in the said premises Kartar Singh accused, however, later on managed to escape. As a result of the search two cars bearing No. Dli 3325 and Dli 7670 and other incriminating documents were seized, from the said premises and from the persons of the accused. Akhtar Ishtiaq and Mehboob Ali who are Pak nationals had unauthorisedly entered into India from Pakistan in Amritsar District They disclosed that they had come to India to work with accused Mohd. Iqbal and were brought to Delhi by Kartar Singh. Jasbir Singh on enquiry disclosed that he at the instance of Harpal Singh and Mohd. Iqbal was bringing smuggled gold from Amritsar to Delhi in car bearing No. 3325. Kartar Singh accused used to accompany him for the said purpose. Jasbir Singh and Kartar Singh accused were receiving smuggled gold from Waghoo and Shabuddin accused residents of Pakistan and were transporting the same from Amritsar to Delhi. Mohd. Iqbal a Pak national had come to India without travel documents at the instance of Qeemat Gul accused, a Pak national for the purpose of receiving smuggled gold sent by Qeemat Gul. On receiving the smuggled gold Mohd. Iqbal and/or accused Ishtiaq Ahmed alias Madan Lal delivered it to Harbans Lal, Kawal Krishan, Suraj Parkash, Murari Lal and Daya Shankar accused. Mohd. Iqbal had obtained an Indo-Pakistan passport from Delhi Administration in the name of Abdul Haq showing himself to be an Indian national and had been visiting Pakistan on the

strength of the said passport.

(4) MOHD. Iqbal on interrogation by the Customs officials made a detailed statement, on the basis of the said information the business and residential premises of Kawal Krishan, Suraj Parkash and Murari Lal accused were searched. The Customs officials during the search seized a set of accounts purported to contain entries about the transactions in smuggled gold brought and/or caused to be brought by Harpal Singh, Jasbir Singh and Kartar Singh accused and delivered by Mohd. Iqbal and Syed Ishtiaq Ahmed accused.

(5) The enquiries made by the Customs officers revealed that all the accused and others unknown persons entered into a criminal conspiracy at Delhi, Amritsar and other places during the period commencing from January, 1964 and extending up to 18th October... 1964, or thereabout for fraudulently evading the duty chargeable on the importation of large quantities of gold and fraudulently evading the prohibition imposed on the import of gold. The accused dealt with large quantities of gold which they knew and/or had reasons to believe that the same was liable to confiscation under the [Customs Act, 1962](#), and/or knowingly sending and/or causing to be sent the sale proceeds of the said gold to countries outside India from India in contravention of provisions of the Foreign Exchange Regulation Act.

(6) On the above allegations, the trial Court, Shri A. K. Goswami, S.D.M., New Delhi, by his order dated 22nd July, 1969, came to the conclusion that a prima facie case under section 120-B of the Indian Penal Code read with section 135 of the Customs Act 1962 and section 23(1-A) of the Foreign Exchange Regulation Act was established against Harpal Singh, Jasbir Singh and other accused, viz., from No. 20 to 43. The trial Court also found that prima facie case of substantive offence under section 135 of the Customs Act was established against Harpal Singh, Jasbir Singh and other accused from No. 20 to 41 while Mohd. Iqbal Mange Lal Jain and Laxmipat Choraria were found to have committed substantive offences under section 23(1-A) of the Foreign Exchange Regulation Act. The trial Court in view of its findings framed charges against the aforesaid accused under the various provisions of law which they were alleged to have infringed.

(7) Feeling dis-satisfied with the charges framed against them some of the accused filed revision petition before the Sessions Judge, Delhi which were heard and disposed of by Shri H. C. Goel, Additional Sessions Judge, Delhi, who by his order dated 25th September, 1971, dismissed the revision petitions filed by Jasbir Singh, Ishtiaq Ahmed, Gulab Chand and Prem Shankar. He, however, accepted the revision petitions of accused Nos. 17, 22, 26, 31, 32, 33, 34, 36, 38, 39, 40, 42 and 43 making the present recommendations that the charges framed against them be quashed holding that on the prosecution evidence no case was made out against them.

(8) Jasbir Singh and Ishtiaq Ahmed feeling aggrieved by the above said order of the Additional Sessions Judge have filed revision petitions being No. 114 of 1972 and 85 of 1972.

(9) It may also be mentioned that Sant Lal alias Santia accused No. 28 did not challenge before the Additional Sessions Judge the framing of the charge against him but has now filed Cr. M. 136 of 1972, under section 561-A, Criminal Procedure Code . seeking cancellation of the charge framed against him.

(10) MOHD. Iqbal, Jasbir Singh and other accused persons during interrogations by the customs authorities made statements, relying on which the prosecution sought to make out a case against the accused in support of the allegations leveled against them in the complaint.

(11) The learned counsel for the petitioners supporting the recommendation vehemently contended that confessional statements made by some of the accused could not be availed of by the prosecution as they did not fall within the ambit of section 10 of the Evidence Act. It was contended that before the provisions of the said section could be invoked the prosecution had to show that there exists reasonable ground to believe that two or more persons had conspired together to commit an offence or an actionable wrong which has to be established by unimpeachable independent evidence. Mere suspicion was not enough to come to a conclusion that two or more persons had conspired. It was urged that if the statements of Mohd. Iqbal, Jasbir Singh and others are eschewed there is no other material on the record on the basis of which it may be open to the

prosecution to contend that reasonable ground exists to believe that two or more persons had conspired together.

(12) There is no merit in this contention. From the personal search of Jasbir Singh, as stated by S. M. Raza, Public Witness 2, five ruqqas. Exhibits P.W. 2/T-1 to T-5 besides registration book, Exhibit Public Witness 2/4, of car No. Dli 3325 were, recovered which documents were taken into possession vide memo. Exhibits Public Witness 2/S. Sarvshri Malkiat Singh, Public Witness 4, and R. L. Khanna, Public Witness 35 corroborate S. M. Raza in this respect. The Ruqqas Exhibits Public Witness 2/T-1 to T-5 reveal clandestine import and sale of some commodity as also remittance of sale proceeds through unauthorised channels. Ruqqa Exhibit Public Witness 2-T/1 shows that the other three Ruqqas Exhibits Public Witness 2/T-2 to T-5 were meant for three different persons in Pakistan. Two of the Ruqqas Public Witness 2/T-2 to T-5 though meant for one 'M' were shown to have been made in different dates. In Ruqqa Exhibit Public Witness 2/T-5 of 17th October, 1964, the writer has stated that he was just going then to make payment of 3500 to Kunt. Besides, the , mentions the word 'market'. The ruqqa when decided in the light of , Reserve Bank Bulletin regarding average price of 10 grms. of 14 ct. gold converted into rates for 22 ct. the said amount of 3500 would mean 3,50,000, Further in Ruqqa Exhibit Public Witness 2/T-2 of 19th October, 1964, it is stated that payment of 3500 had been made to 'Kunt'.

(13) MOHD. Iqbal in his statement (Exhibit Public Witness 2/W2) proved by S. M. Raza, Public Witness 2, admits having written the above-said ruqqas (Exhibits Public Witness 2/T-1 to T-5) to his brother in Pakistan. The ruqqas were to be carried by Jasbir Singh and were to be delivered to Mohd. Iqbal's brother in Pakistan.

(14) From the search of Mohd. Iqbal's suit-case amongst other articles, a paper torn from exercise book containing accounts (Exhibit Public Witness 2/H) was recovered vide memo. Exhibit. Public Witness 2/B. This recovery is supported by S. M. Raza, Public Witness 2, Malkiat Singh, Public Witness - 4, and R.L. Khanna, Public Witness 35. The accounts found in Exhibit Public Witness 2/H tally with accounts stated in Ruqqa Exhibits Public Witness 2/T-1 to T-5.

(15) From the search of house No. 115, defense Colony, New Delhi, conducted on 13th October, 1964, two cars, namely, Austin bearing No. Dli 3325 and Fiat No. 7670 were recovered. In car Dli 3325 one cavity underneath the front door was discovered besides equipment for making alterations was also found in it as per report Exhibit Public Witness 7/A made by Shri O. N. Khana, Public Witness 7. On 18th February, 1965, the said car was taken to a service station when on checking another cavity was found in it. The statement of Shri Khanna finds corroboration from photographs Exhibits Public Witness 7/B to Public Witness 7/D showing cavities in the car and from Exhibit Public Witness 7/E showing the payment made to service station for checking the said car.

(16) The above documentary evidence coupled with the statements of the witnesses beyond doubt shows that two or more persons had entered into a conspiracy to smuggle gold into India and to remit the sale proceeds of the said gold to foreign countries. 'A conspiracy is hatched in secrecy and executed in darkness. It may be difficult to give direct proof of agreement of conspiracy. In the instant case besides the oral evidence there is strong circumstantial evidence from which legitimate inference can be drawn that two or more persons had conspired together to commit an offence or an actionable wrong, the requirement of the first part of section 10 of the Evidence Act would be fulfilled.

(17) The next question to be considered is whether the statements made by Mohd. Iqbal, Jasbir Singh and some other accused can be said to fall within the ambit of 'anything said, done or written', as envisaged by section 10 of the Evidence Act which for facility of reference is re-produced below :-

'10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of shewing that any such person was a party to it'.

(18) This section had been examined in a series of cases. It would, therefore, be appropriate to note those cases with a view to ascertaining the scope and applicability of the said section.

(19) It was observed that the words of section 10 of the Evidence Act are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out conspiracy after it has been completed. The words 'common intention' signify the common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of common intention, once reasonable ground has been shown to believe in its existence but it would be very different matter to hold that any narrative or statement of confession made to a third party after the common intention or the conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. Further, a distinction has to be drawn between communications between the conspirators while the conspiracy was going on with reference to the carrying out of the conspiracy and statements made, after arrest or after the conspiracy had ended, by way of description of events then past.

(20) Their Lordships of the Privy Council in interpreting section 10 of the Evidence Act noted decision in which case a document not created in the course of parrying out the transaction but made by one of the conspirators after the fraud was completed, was held to be inadmissible against the other.

(21) In *Mirza Akbar's case* (supra), (1), was also noted by their Lordships of the Privy Council. In that case *Abani Bhushan Chuckerbutty* after his arrest made a statement to a Magistrate implicating himself and eight others accused in the conspiracy. The said statement was not treated as evidence under section 10 of the Evidence Act as the said section, it was observed, was not intended to make evidence the confession of a co-accused and put in on the same footing as a communication passing between conspirators or between conspirators and other persons with reference to conspiracy.

(22) Case was also noticed in Mirza Akbar's case. In that case interpreting section 10 it was observed that narratives-coming from the conspirators as to their past acts could not be said to have a reference to their common intention. The word 'intention' implies that the act intended is in the future and the section makes relevant the statements made by a conspirator with reference to the future.

(23) In section 10 was held to be drawn in such a way that a statement made by one conspirator is made admissible as against the other conspirator if it merely showed the existence of a conspiracy although it may not have been made with a view to furthering the object of the conspiracy. However, confessional statements made after the conspiracy had come to an end, and the conspirators already apprehended being or were about to be prosecuted, were held to be not admissible.

(24) It may be noted here that Mirza Akbar's case⁽¹⁾ was considered by their Lordships of the Supreme Court in. It was observed at page 760 that the limits of the admissibility of evidence in conspiracy cases under section 10, Evidence Act have been authoritatively laid down in Mirza Akbar's case in that S. 10. Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. Accordingly in Sardul Singh Caveeshar's case⁽⁵⁾ it was observed at page 764 that in criminal trials, on a charge of conspiracy evidence not admissible under section 10 of the Evidence Act as proof of the existence of conspiracy and of the fact of any particular person being a party to that conspiracy, is not admissible at all. Further, that the principle underlying the reception of evidence under section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the principle of agency by which 'an overt act committed by any one of the conspirator is sufficient' to make it 'the act of all' within the period during which it can be said that the act or acts were 'in reference to their common intention' in carrying out the conspiracy while the conspiracy was on foot.

(25) The principle of law deducible from the above-said authorities is that (1) any narrative or a statement of confession made by any of the conspirators in the

absence of the other with reference to past acts done in the actual course of carrying out conspiracy after it has been completed is not admissible in evidence under section 10 of the Evidence Act as there is then no common intention of the conspirator to which the statement can have reference and (ii) that the words 'common intention' signify the common intention existing at the time when anything was said, done or written.

(26) Shri Watel, the learned counsel for the respondents, however, sought to distinguish Mirza Akbar's case on the ground that the decision in the said case followed Reg v. Blake based on the provisions of the English Law being different from the language of section 10. Evidence Act, in which the expression 'in reference to their common intention', which is a very comprehensive expression has been designedly used than the words 'in furtherance of' in English Law. It was submitted that Mohd. Iqbal and Jasbir Singh at the time they made the statements lifting the lid off the conspiracy did not cease to be a party to the conspiracy entertaining common intention as during the enquiry made by customs officers they did not stand in the character of an accused. The statements made by them were not the statements made by the accused persons. The statements accordingly fell within the ambit of the expression 'anything said, done or written' in reference to the conspiracy, more so when the act intended by a conspirator does not contemplate reference to a future act.

(27) Support for this argument was drawn from case, wherein it was observed that the expression 'in reference to their common intention' used in section 10, Evidence Act is very comprehensive and it appears to have been designedly used to give it a wider scope than the words 'in furtherance of' in the English law; with the result anything said, done or written by a co-conspirator after the conspiracy was formed will be evidence against the other before he entered the field of conspiracy or after he left it.

(28) Shri Watel strenuously contended that the statements of Jasbir Singh and Mohd. Iqbal, were recorded prior, to their arrest. The conspiracy Still being in existence, the statements made by them would not assume the character of a 'narration of past events' as by then the object of the conspiracy had not been

completed. Shri Watel, therefore, submitted that the said statements are admissible under section 10 of the Evidence Act, not only for the purpose of proving the existence of the conspiracy but also for proving that the other persons were a party to it.

(29) The contention appears to be well merited. It is in the testimony of S.M. Raza, Public Witness 2, that both Jasbir Singh and Mohd. Iqbal were arrested after their statements were recorded. Mohd. Iqbal according to Shri Raza (page 32) was arrested between 7 or 8 p.m. in the evening on 18th October, 1964, by him after his statement had been recorded in the earlier part of the day. Malkiat Singh Public Witness 4 supports S. M. Raza in averring that Jasbir Singh and Mohd. Iqbal were not under arrest at the time their statements were recorded.

(30) The learned counsel for the petitioners, however, submitted that according to Malkiat Singh (page 38) the raiding party had cordoned the premises and while questioning Jasbir Singh and Mohd. Iqbal they did not allow them to go anywhere, and that they were kept in separate rooms. This, it was urged, implied restraint on their free movements and amounted to being put under arrest though formal arrest was not made at that time. There is no force in this submission. They were not allowed to go as the officers of the custom having reasons to believe and being in possession of the information in respect 'of smuggling of any goods' wanted to record their statements and for so doing kept them in separate rooms to eliminate the possibility of the one knowing as to what the other had stated. In the circumstances, the submission that there was restraint on their movement which virtually amounted to putting them under arrest cannot be countenanced. No discreditable reason is forthcoming on the record why S. M. Raza and Malkiat Singh be not believed when they say that Jasbir Singh and Mohd, Iqbal were not arrested when their statements were recorded under section 108 of the [Customs Act, 1962](#). Sub-section (1) of the said section empowers any gazetted 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. It is not disputed that Shri S. M. Raza was a gazetted officer. He without doubt was making an enquiry in connection with the smuggling of any goods. It was

accordingly open to him and within his competence to record statements of Jasbir Singh and Mohd. Iqbal for which purpose he could compel their attendance. Sub-section (3) of the said section envisages that all persons summoned under sub-section (1) shall be bound to attend either in person or by an authorised agent, as such officer may direct ; and all persons so summoned shall be bound to state the truth upon any subject suspecting which they are examined or make statements and produce such documents and other things as may be required. Further) according to sub-section (4) every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section. 228 of the Indian Penal Code. Compulsion to attend in obedience to the summons of a gazetted officer of customs is envisaged by the provisions of the above said section. There is thus no force in the contention that since Jasbir Singh and Mohd. Iqbal of their free-will could not go away after the raid by itself should be sufficient to hold that they were under arrest and the statements made by them would partake the character of a 'narrative of past events' on the completion of the conspiracy.

(31) At the time when they made statements the conspiracy was afoot and both of them entertained common intention with other conspirators to fulfill and achieve the object of the conspiracy. There would thus be justification to put their statements 'on the same footing as communication passing between conspirators and other persons with reference to conspiracy'. Their statements on the facts and in the circumstances of the case cannot be termed a 'narrative or statement or confession made to a this party after the common intention or the conspiracy was no longer operating' or 'had ceased to exist'. The perusal of the statement of Mohd. Iqbal, Exhibit Public Witness 2/W2, belies its being termed as a narrative of past events of the conspiracy which had ceased to exist. Apart from describing the role played by the various accused including himself, he had stated (page 7 of his statement) that they had yet to pay the sum of Rs. 92,500.00 to Bukhari in Pakistan on account of the price of the smuggled gold who had asked him to render full accounts of the transaction. He (Mohd. Iqbal) accordingly had prepared the account per ruqqas. Exhibits Public Witness 2/T-1 to Public Witness 2/T-5 that he gave to Jasbir Singh for delivery to Bukhari. The amount due to Bukhari was yet to be smuggled out of India to be paid to him in Pakistan. This by itself is

sufficient to hold that conspiracy had not ceased to exist. That Jasbir Singh and Mohd. Iqbal entertained common intention with other conspirators is borne out from the fact that on 18th October, 1964, when Ishtiaq came to D-115, defense Colony, New Delhi, in the morning Jasbir Singh told him that goods had arrived from Amritsar and that the same be taken out from the car. Ishtiaq then rang up Daya Shankar where after he took out one 'Tokra' and two bundles from the car which had come from Amritsar. Ishtiaq then placed the said articles in car bearing No. Dli 7670 and asked Mohd. Iqbal to drive the same towards the house of Daya Shankar. Mohd. Iqbal drove the car as directed.

(32) The law having been finally settled by their Lordships of the Supreme Court in Bhagwan Swarup's case (supra) (7) that the expression 'in reference to their common intention' used in section 10, Evidence Act are very comprehensive and appear to have been designedly used to give it a wider scope than the words 'in furtherance of' in the English Law. Accordingly, anything said, done or written by a co-conspirator after the conspiracy was formed will be evidence against the other conspirators regardless of the fact that the thing was said, done or written before the other conspirator entered the field of conspiracy or that the thing was said, done or written by a conspirator after the other left it.

(33) In the instant case as already observed in an earlier part of this judgment there is prima facie evidence that Jasbir Singh and Mohd. Iqbal were party to the conspiracy, along with other known and unknown persons. The facts revealed by them in their respective statements being in reference to their common intention and in respect of the period after such intention was entertained to smuggle gold into India from Pakistan and sending its sale proceeds from India to outside India are relevant and can be used against other conspirators to prove (1) the existence of the conspiracy and (2) that other coaspirators were a party to it.

(34) Even otherwise on the facts on the record it is not possible to hold that by the arrest of Jasbir Singh, Mohd. Iqbal and two others the conspiracy stood frustrated or determined so as to characterise the statements of Jasbir Singh and Mohd. Iqbal as narration of past events after the conspiracy was no longer operating and had ceased to exist and that there was then no common intention of the

conspirators to which the statements can have reference.

(35) The charge against the petitioners is that Mohd. Iqbal, Jasbir Singh, Ishtiaq Ahmed and other accused persons during the period commencing from January 1964 and extending up to 18th October, 1964, or thereabout were party to a criminal conspiracy for fraudulently evading duty chargeable on the importation of large quantities of gold and fraudulently evading the prohibition as imposed by the Foreign Exchange Regulation Act 1947 (as amended) and/or imposed by virtue of [Customs Act, 1962](#), and for acquiring possession of, and/or carrying, removing, harbouring, depositing, keeping, concealing, purchasing, or otherwise dealt with large quantities of gold which they knew or had reasons to believe was liable to confiscation and/or knowingly sending the sale proceeds of the said gold to countries outside India from India, besides being knowingly concerned in fraudulent evasion of any duty chargeable thereon.

(36) The petitioners according to the allegation in sub-para (ix) of para 1 of the complaint were alleged to have entered into criminal conspiracy during the period commencing from January 1964 and extending up to 18th October, 1964, or thereabout but it is nowhere alleged in the complaint that the conspiracy was achieved by 18th October, 1964, either because the purpose was frustrated or otherwise its object was achieved.

(37) The accusations in the complaint and a perusal of the charge without doubt reveals that Mohd. Iqbal, Jasbir Singh and two of their other companions who were arrested on 18th October 1964, were not the only persons involved in the racket of smuggling gold in pursuance of the conspiracy the very nature of which is sufficient to dispel the contention that by the arrest of the above-said four persons the conspiracy came to a halt and stood disrupted to enable the petitioners to contend that the statements made by Mohd. Iqbal and Jasbir Singh were nothing but a 'narration of past events' so as to take them out of the purview of section 10. The very nature of the conspiracy shows that persons other than those arrested on 18th October 1964 were also involved. It is on record that Kartar Singh absconded from the scene. Mohd. Ishtiaq was not available at the time of raid. A perusal of 'ruqqas'. Exhibits Public Witness 2/T-1 to T-5 unmistakably reveal that other

persons were involved and actively participating in the conspiracy. Each one of the accused may not be knowing who brought the contraband gold, through whom it was sold and through whom the sale proceeds were sent out of India. The scheme may have been promoted by a few with others joining at a later stage, the conspiracy developing in successive stages and different groups of persons assuming a particular role to play the common intention of the limited group being to work for the furtherance of the common design of the group albeit their activity ultimately benefited the larger conspiracy of smuggling gold into India from outside in disregard of law and in sending the sale proceeds thereof to countries outside India from India.

(38) The other persons who were involved in the conspiracy could not be said to have discarded it on the arrest of Jasbir Singh and others. That being so, the arrest of the four persons on 18th October, 1964, did not necessarily mean the end of the conspiracy. In the premises the statements in question cannot be dubbed as narrative of the past events.

(39) There being an identity of interest or community of purpose between the conspirators, the statements in question are admissible under section 10 of the Evidence Act as the declarations made in the statements have a relation to the object of the conspiracy. The essence of the conspiracy is that there should be an agreement between two or more persons to do an act or acts enumerated in section 120-A of the Indian Penal Code. The agreement may be proved either by direct evidence or an inference may be drawn from the acts and conduct of the parties. The statements in question while referring to the activities of the co-accused are with reference to their common intention and as such the statements are relevant as against each of the persons believed to be so conspiring as well as for the purpose of proving the existence of the conspiracy as also for the purpose of showing that any such person was a party to it.

(40) On behalf of the petitioners it was sought to be contended that the said statements otherwise could not be taken into consideration. The argument being that cases of criminal conspiracy being punishable under section 120-B of the Indian Penal Code, provisions of section 5-A of the Criminal Procedure Code

(herein to be called 'the Code') would be applicable and that the investigation in respect of the allegations of criminal conspiracy was required to be made by the police who on investigation were to forward its report under section 173(1) of the Code in which event the procedure envisaged by section 251 -A of the Code was to be followed. The Customs officers are not empowered under the Customs Act to investigate into cases of conspiracy and its abetment and as such have no power, (goes the argument), to file a complaint in respect of allegations of criminal Conspiracy in their official capacity in the discharge of their duties. It was contended that the customs officers in the instant case acted mala fide in the colourable exercise of their powers. They have investigated into the alleged offence , criminal conspiracy in the garb of enquiry when no adjudication proceedings under the Customs Act were initiated against the accused persons.

(41) The customs Act, it was contended, is a Code in itself. Only such acts could be performed by the Customs officers as are provided in the Act but they could not arrogate unto themselves the powers of police officers and investigate into the charges of criminal conspiracy which power is not given to them being revenue officers.

(42) I was carried through the various provisions of the Customs Act to show that it provides for the examination of persons during the course of any enquiry who are acquainted with the facts and circumstances of the case and requiring them to produce or deliver any documents (section 107); to summon persons, by a gazetted officer, to give evidence or to produce a document or a thing (section 108); to seize goods, documents and things (section 110); to confiscate goods imported contrary to any prohibition (section 111(d)); to adjudicate in respect of goods liable to confiscation or in respect of any penalty imposable on a person (section 122); to launch prosecutions regarding infringement of the provisions of the Customs Act as provided in Chapter XVI; to taking cognizance of offences under the Act (section 137) and to raise presumptions as to documents (section 139). Further, in pursuance of sub-section (1) of section 5 of the Customs Act, subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under the Act. The Act, it was urged, purposely omitted to provide for

investigation by the Customs officers into cases involving criminal conspiracies.

(43) There being a charge of conspiracy under section 120-B of the Indian Penal Code it was urged investigation in the instant case was required to be carried on by the police. If that be so, it was contended the confessional statements of Mohd. Iqbal and Jasbir Singh having not been recorded in conformity with the provisions of section 164 and section 364 of the Code, cannot be relied upon.

(44) The arguments appear to be specious but are without substance. The duties of the Customs Officers take within their purview the detection and prevention of smuggling of any goods besides safeguarding the recovery of Customs duties. For the proper and efficient performance of their duties a gazetted officer of the Customs is empowered under section 108 of the Customs Act, relevant provisions of which have already been noted in an earlier part of the judgment, to make enquiries in connection with the smuggling of any goods. For the aforesaid purpose all persons summoned either to give evidence or produce a document shall be bound to attend and 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. If during the course of examining such persons, the Customs officers stumble upon a criminal conspiracy hatched by some persons they cannot be accused of resorting to colourable exercise of their power.

(45) The statements of Jasbir Singh and Mohd. Iqbal having been recorded under section 108 of the Customs Act, the applicability of sections 164 and 364 of, the Code is not attracted. For the same reason the other argument that the said statements having been signed by the maker thereof cannot be used save in consonance with the provisions of section 162 of the Code has to be rejected. Section 162 of the Code refers to a statement made to a police officer in the course of investigation under Chapter Xiv of the Code. Besides, it has been held in a series of cases that a Customs officer is not a police officer. It has to be borne in mind that the complaint amongst other provisions of law has been filed under section 135 of the Customs Act. Section 137(1) of the Act envisages that no court shall take cognizance of any offence under section 132, section 133, section 134 or section 135, except with the previous sanction of, the Collector of Customs.

(46) The conspiracy of which the petitioners are charged was about the violation of the Customs Act. It was during the course of their normal duties of preventing and detecting the smuggling of any goods that enquiries were being made by the customs officials. The connotation of the word 'investigation' made by the Customs Officers is to be taken in a larger sense and is not to be restricted to the term 'investigation' used in section 4(e) of the Code. The investigation made by a customs officer is a fact finding mission. A customs officer while making enquiries does not accuse anybody of any offence at that stage. In filing the present complaint against the petitioners under section 135 of the Customs Act, merely because they are also alleged to have committed an offence under section 120-B of the Indian Penal Code did not warrant that a report should have been made by an officer in charge of the police station. The customs officer did not act under the provisions of Chapter Xiv of the Code but he acted under Chapter Xiii of the Customs Act. It was within the competence of Shri A. L. Nanda being a customs officer to file the present complaint alleging violation of the provisions of the Customs Act. Cognizance of the complaint under section 135 of the Customs Act can be taken by a Court only on a complaint filed with the previous sanction of the Collector of Customs.

(47) In the Assistant Collector of Customs, it was observed that on a plain reading of section 173 of the Code, it is clear that the same is wholly inapplicable to a case instituted on a complaint. Provisions of the said section are attracted only in a case investigated by a police officer under Chapter Xiv of the Code. But in a case instituted on a complaint procedure under sections 252 to 259 will be applied.

(48) On behalf of the petitioners it was contended that though apparently sections 107 and 108 of the Customs Act appeared to confer similar powers on non-gazetted and gazetted officers respectively yet a close scrutiny thereof would show that resort to the provisions of section 107 is to be made while a non-gazetted officer of the customs holds an enquiry for checking the smuggling of any goods or for the purpose of collecting customs duties but provisions of sections 108 are available to a gazetted officer only at the time he proceeds to adjudicate regarding confiscation of goods or imposition of penalty as on templated by section 122 of the Customs Act.

(49) It was vehemently contended that section 122 cannot be said to be a self-contained section. It only contemplates for adjudication in a matter before confiscation of goods or imposition of penalty but does not prescribe what procedure a gazetted officer is to adopt. The procedure, it was contended, is to be found in section 108.

(50) Section 108, so read, would form part of section 122 of the Customs Act.

(51) In the instant case, the stage of adjudication, it was urged, was not reached. The Customs officers were yet making enquiries in the matter. During the enquiries they could not record statements under section 108. The statements having been obtained unauthorisedly, could not be taken into consideration for the purpose of framing charge against the petitioners.

(52) Support for this argument was sought from an unreported decision of this Court in C.W. 1342 of 1972 (Parshotam Singh Chopra v. Shri N. P. Sahni and another) decided on 16th April, 1973, (9) wherein while examining the provisions of sections 19-E and 19-F of the Foreign Exchange Regulation Act, Deshpande, J. observed that the said sections are 'modelled on the analogy of sections 107 and 108 of the [Customs Act, 1962](#). Chapter Xiii of the Customs is entitled 'Searches, Seizure and Arrest'. Sections 107 and 108 are contained there under. There can be no doubt, therefore, that they related to what may be analogous to investigation. Chapter Xiv deals with confiscation of goods and imposition of penalties. Sections 122 to 124 which deal with power and procedure of adjudication are contained there under. Clear distinction between investigation and adjudication is, therefore, made in the Customs Act. Since the analogy of Customs Act has been invoked by the statement of objects and reasons of the 1964 Amendment Act, Sections 19E and 19F may be taken to be provisions in the nature of investigation and collections of evidence not related to adjudication'.

(53) The above observations do not support the contention that Section 108 is to be read as part of section 122 providing for procedure to be adopted by a Gazetted Customs Officer to collect data before he proceeds to adjudicate, viz., to confiscate any goods or impose penalty on any person. Deshpande, J. on the contrary has observed that the power and procedure of adjudication is contained

in sections 122 to 124 in Chapter XIV. The procedure to be adopted, while proceeding to adjudicate, is the one laid down in section 124 and is not to be found in section 108. A close scrutiny of section 108 and its placement in the Act shows that the power conferred by the said section is available to a Customs Officer at the stage of enquiry. Chapter Xiii unambiguously makes it clear that it relates to enquiries, viz., providing for 'Searches, Seizures and Arrest'. The said Chapter does not talk of adjudication. The various sections under this Chapter provide for Carrying out search of suspected persons, to screen or X-ray bodies of suspected persons for detecting secreted goods, to arrest persons who are guilty of an offence punishable under section 135, to search premises, to stop and search conveyances, to enter any place and inspect the goods found therein, to examine persons and to summon them to give evidence and produce documents and to seize goods, documents and things. The Customs Officers have been invested with the powers enumerated above to enable them to effectively perform their functions by holding enquiries to thwart the anti-social activities of the smugglers. The provisions in respect of power of procedure relating to confiscation of goods and conveyances and imposition of penalties is provided for separately in Chapter XIV.

(54) It was observed that powers are conferred upon a Customs Officer primarily for the collection of Customs Duties and prevention of smuggling. Powers conferred on a Gazetted Officer under section 108 are referable to the performance of the aforesaid duties. There is accordingly no merit in the contention that the statements of the accused persons under section 108 were obtained unauthorisedly by the Customs Officers.

(55) The next contention that because of the presence of police officials at the time the statements were recorded they are hit by the provisions of sections 25 and 26 of the Evidence Act is equally devoid of merit. Section 25 envisages that no confession made to a police officer, shall be proved as against , person accused of any offence while according to section 26, no confession made by any person while he is in the custody of a police officer shall be proved as against such person, unless it be made in the immediate, presence of a Magistrate.

(56) There is no denying the fact that the police was present outside at the time of raid as also when the recoveries were made and the statements were recorded. The mere fact that the police was present would not mean that the statements were, made to the police rendering them inadmissible under the aforesaid sections.

(57) There is no ground for the applicability of the provisions of section 26 of the Evidence Act which postulates about confession by a person in police custody in contradiction to the confession made by a person in the presence of the police. The statements were made to the Customs Officers who recorded the same under section 108 of the Customs Act. Besides, the presence of the police would not mean that Mohd. Iqbal and Jasbir were in the custody of the police at the time their statements were recorded by the Customs Officers. The statements in fact were not made to the police.

(58) A confessional statement may fall outside the ambit of section 25 of the Evidence Act notwithstanding the presence of a police officer at the time when the confession was made if it is established that the confession was not made to him but to some one else who was not a police officer, (12) In the instant case the statements as a fact were recorded by the Customs Officers under section 108 of the Customs Act.

(59) There is a catena of authorities to the effect that a Customs Officer is not a police officer. The duties of Customs Officers are very much different from those of the police officers. Their possessing certain powers, which may have similarity with those of police officers, for the purpose of detecting the smuggling of goods and the persons responsible for it would not make them suspect. The proceedings of a Customs Officers under section 108 have been made judicial proceedings for certain purposes. In the premises it cannot be countenanced that record of statements made to him could be suspected if such statement be of confessional nature. (See Ramesh Chandra Mehta's case (supra), (10)

(60) Further, are direct authorities to the effect that a Customs Officer cannot be regarded as a police officer within the meaning of section 25 of the Evidence Act. Further that the statements recorded by an Officer of Customs under the Customs

Act are admissible in evidence and not hit by section 25 of the Evidence Act or Article 20(3) of the Constitution of India.

(61) Another objection to the admissibility of the statements was that because of the presence of the police, the statements could not be said to have been made voluntarily or that the same were free from threat or duress. This contention is equally devoid of force.

(62) Reference has already been made in an earlier part of this judgment to the provisions of section 108 of the Customs Act, which makes it abundantly clear that a person summoned by a Gazetted Officer of Customs is bound to state truth upon any subject respecting which he is to be examined and the inquiry so conducted assume the complexion of a judicial proceeding. There being an obligation cast upon the person summoned to state the truth about which he can be warned by the Customs Officers, the inquiry being a 'judicial proceeding' the presence of the police in the premises cannot be of any consequence.

(63) In (17) it was observed that in an inquiry under section 108 of the Customs Act, a statement given by a person against whom the inquiry was being held is not a statement

(64) The statements of Mohd. Iqbal and Jasbir Singh reveal that they spoke the truth. Their statements find corroboration from important documents, i.e., Ruqqas T/1 to T/5. Again the chit, Exhibit Public Witness 2/H, recovered from Mohd. Iqbal besides the car with secret chambers vouchsafe to their statements being voluntary and truthful.

(65) The statement of Mohd. Iqbal was assailed on the ground that according to the design of the conspiracy the statement does not fit in. Further, the statement was exculpatory. It was urged, Mohd. Iqbal says that it was through Ishtiaq that he learnt that the bundles alleged to have been brought on the day the raid was conducted, contained gold. It was not possible to believe that Mohd. Iqbal did not know that the bundles contained gold, he being an active participant and a moving spirit behind the conspiracy. The tenor of his statement is exculpatory. In the circumstances it was submitted that the statement could not be relied upon being

wholly unimpressive. There is no force in this contention. The statement of Mohd. Iqbal when read as a whole leaves no manner of doubt that its tenor is inculpatory. It was only with regard to the bundles that were brought on the day the raid was conducted that he learnt through Ishtiaq that they contained gold. But for this, the statement on the whole is inculpatory, there being no effort to save his skin.

(66) It was next contended that the statements of Jasbir Singh and Mohd. Iqbal were purported to have been recorded under section 108 of the Customs Act which is a judicial enquiry. That being so, the enquiry was held at the back of the accused who were, not given a notice of the allegations which were enquired into. The statements recorded in the absence of the accused at their back could not be looked into for the purpose of framing charge against the accused. There is no substance in this submission. Section 108 of the Customs Act does not contemplate that before the statement of a person who has been summoned to give evidence is recorded a notice is to be given to all persons whom he may implicate and to give them an opportunity to cross-examine him. A Customs Officer does not decide a lis at this stage. Even when a confession is recorded by a Magistrate under section 164 and 364 of the Code, the person accused is not given an opportunity to cross-examine the witness making the confessional statement.

(67) Lastly, it was contended that the statements of witnesses recorded under section 108 of the Customs Act, who had yet not been examined in Court, could not be taken into consideration at the stage of framing the charge. This contention is without any substance. These statements, viz., of Lal Bahadur, Sansar Chand and others, were produced by the department on a direction by the Court in an application made by the accused under section 94 of the Code. Besides, they were duly proved by the persons who had recorded them. If the Court had taken cognizance of this case instituted on a police report in compliance with the provisions of section 251-A of the Code, without doubt resort to the said statements could be made for framing charge. No cogent reasons were advanced by the learned counsel for the petitioners why the said statements be not considered when they were brought on the record in compliance with the provisions of section 94 of the Code.

(68) Since I have already held that the statements made by Jasbir Singh and Mohd. Iqbal are available to the prosecution under section 10 of the Evidence Act for the purpose of framing charge the question whether in the alternative the prosecution could avail of the said statements by virtue of the provisions of section 30 of the Evidence Act and whether the case was at the 'inquiry' or 'trial' stage when the learned Magistrate proceeded to frame charges and further whether the accused could be said to be on joint trial with each other assumes academic interest only. A good deal of discussion centered round the contentions noted above. The learned counsel for the parties in an able address relied upon a large number of authorities to support their respective contentions, in the view that I have taken it is not necessary to go into a detailed discussion about these questions.

(69) It has been firmly established that the confession of a co-accused cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept the evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases the confessional statement of one accused cannot be read as substantive evidence qua the other accused. The law enjoins upon a Court first to consider the other evidence in the case which if accepted it is only then to bring assurance as regards the guilt of the accused that the Court may look to the confessional statements of the co-accused in the case of non-confessing accused. In other words, a confession can be used in support of the evidence and cannot be made the foundation of a conviction. (See *Hari Charan Kurmi v. State of Bihar*, : 1964 CriLJ344 and *State v. Shankar Sakharam Jadav and another*, : AIR1957 Bom226). Where the other evidence adduced against the accused person is wholly unsatisfactory, conviction cannot be recorded by falling on the confession of a co-accused.

(70) The statement of Mohd. Iqbal being the statement of an accomplice can also be availed of by the prosecution qua the other accused as envisaged by section 133 of the Evidence Act.

(71) It is an unexceptionable rule that an accomplice is a competent witness against an accused person. A conviction can be based upon the uncorroborated testimony of an accomplice. However, as a rule of prudence Courts insist upon corroboration from other evidence on record to ensure whether an accomplice is speaking the truth. It being left to the Court as to what corroboration it will seek there being no measure of the extent of corroboration which depends upon the facts of each case keeping in view that every detail of the story of the accomplice need not be substantiated by independent evidence. Corroboration is required as an accomplice is considered unworthy of credence because 'it is possible that he may, to please the prosecution weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that the Courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice'.

(72) The next contention of the learned counsel for the petitioners was that the case being at a stage for framing the charge we are still at the inquiry stage and it could not be said that the stage of trial had reached to contend that Mohd. Iqbal was on joint trial with the other accused. The contention was that the trial begins in a case exclusively triable by a Court of Sessions after the charge is framed by the committing magistrate and in a warrant case the trial begins when the accused is called upon to plead to a charge. This contention is equally devoid of force. The procedure of the trial of warrant cases, is prescribed in Chapter XXI of the Code. Cases instituted on complaint are to be tried according to the procedure prescribed in sections 252 to 254 of the Code. In warrant cases instituted on a complaint, trial would commence when the accused appears or is brought before a magistrate and the Magistrate proceeds to hear the complaint (if any) and take all such evidence as may be produced in support of the prosecution. It is wrong to contend that in a warrant case trial shall commence when an accused is called upon to plead to a charge. In *Ram Chandra Narhar Abhyankar v. Emperor*, Air 1944 Bom 14, it was observed that Chapter 21 does not remit the sale proceeds of the said gold to foreign countries. Different part played by an individual accused, despite his having not known the entire scheme of the

conspiracy which may be known to a few only, would nonetheless be a step in achieving the conspiracy. In the process an individual accused may have only infringed the provisions of the Foreign Exchange Regulation but having been a participant in the conspiracy with the common object of achieving it he would be guilty of the infringement of the customs Act, and would, therefore, be on joint trial with other accused in respect of all the offences alleged to have been committed by the accused.

(73) On behalf of the petitioner an objection was raised as to the maintainability of the complaint on the ground that it was not in conformity with the provisions of section 4(1)(h) of the Code. The precise allegation was that in the instant case the complaint does not give the facts but only quotes the law which cannot be substituted for any ingredient of the offence. A bare persual of the complaint is enough to negative this submission. Necessary facts have been stated in the complaint in which evidence is not to be recapitulated. It was also submitted that Shri R. L. Khana, Public Witness 35, was deliberately withheld to be produced in the end to fill up the gaps in the prosecution story, so that the entire information in the knowledge of the prosecution was not brought on the record through Public Witness s. 1 to 34 which has resulted in prejudice to the accused. The submission is equally devoid of force. It is for the prosecution to choose the order in which it will examine the prosecution witnesses to which exception cannot be taken by the defense. The petitioners have not shown any prejudice having been caused to them in examining Shri R. L. Khana last of all. Besides 'prejudice caused' has to be alleged as a fact in the grounds of attack which the petitioners have failed to do.

(74) The learned counsel for the petitioners strongly urged that the testimony of Shri R. L. Khana be discarded and not taken into consideration. The attack was mounted on the allegation that his name did not exist in the calendar of witnesses. Further, it was not open to the prosecution to contend that merely because at Seriall No. 46 of the list of witnesses, the witness proposed to be examined is stated to be 'officers of the Customs' that description would cover Shri Khana as well. It was submitted, at Seriall No. 46 of the list of witnesses, the name of the witness has been deliberately kept vague to avail of an officer of the type, that Shri

Khana happens to be buttress the stand of the prosecution even if it happens to be a false one. The scheme behind section 204(1-A) of the Code, it was contended, forbidding issuing of summons or warrant against an accused until a list of the prosecution witnesses has been filed is to give notice to the accused of the names of the witnesses of the complaint so that he may be ready with their cross-examination, and may not be taken unawares. That being so, it was submitted, a complainant is restricted to the examination of witnesses whose names are given in the list.

(75) It is no doubt true that the requirement of the law [section 204(1-A)] is that the list of witnesses whom the complainant proposes to examine, is to be furnished along with the complaint but a bare perusal of section 252(1) of the Code shows that no limitation is imposed on the prosecution in respect of the evidence it wants to produce. In other words with the permission of the Court more witnesses than those named in the list can be examined.

(76) The statement of Shri Khana having been recorded it will be presumed to be with the permission of the Court.

(77) Another contention challenging the maintainability of the complaint was that the complainant Shri A. L. Nanda was not examined by the Court in support of the complaint at the time it was filed in the Court. This contention is devoid of force. The complaint has been filed by Shri A. L. Nanda in his capacity as a Customs Officer, it was not required to examine him at the time the complaint was filed. Even if it be held that Shri Nanda filed the complaint as a private citizen, omission to examine him in support of the complainant is an irregularity which is curable and does not vitiate the proceedings.

(78) Before parting with the legal aspects of the case it would be appropriate here to examine the contention of the learned counsel for the respondents to the maintainability of the Cr. M. (M) 136 of 1972 filed by Shri Sant Lal on the ground that he having not filed a revision petition before the Sessions Judge was precluded from assailing the charge in a petition under section 561-A of the Code. Support for this argument was drawn from wherein it was observed that inherent powers of the Court cannot be invoked in regard to a matter which could be

challenged under the specific provisions of the Code providing for filing revisions. On behalf of Sant Lal it was contended that framing of charge against him on the evidence on record would be an abuse of the process of the Court. If that be so, the present petition filed by him would be competent. In this connection reliance was placed on wherein it was observed that the High Court in exercise of its inherent jurisdiction under section 561-A Criminal Procedure Code . could quash a charge when there is no legal evidence to support the charge. Reliance was also placed on wherein it was observed that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. That being the position in law, because of the allegations made by Sant Lal that there is no legal evidence to support the charge against him, the grievance has to be examined on merits.

(79) This brings me to the merits of the case in respect of each petitioner.

(80) In support of allegations of criminal conspiracy it is not always possible to give affirmative evidence about the date of formation of criminal conspiracy; about the object which the conspirators set before themselves. The object of the conspiracy and the manner in which the object of the conspiracy is to be carried put, is necessarily a matter of inference.

(81) It is not necessary for the prosecution to attempt to fix a precise date for the inauguration of the conspiracy. It is sufficient if they stated and proved that between certain dates a conspiracy was in existence.

(82) A criminal conspiracy persists so long as persons constituting the conspiracy are in agreement and so long as they act in accord in furtherance of their common object. The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement is the gist of the offence. The offence would be complete even though two or more persons conspiring together go no further than having entered into an agreement to do or cause to be done an illegal act or an act which is not illegal, by illegal means.

(83) Taking up the case of Jasbir Singh to start with, his statement is enough to sustain the charge against him. His petition was rightly dismissed by the learned Additional Sessions Judge. His statement regarding his arrival at D-115, defense Colony on the morning of 18th October, 1964, in a car, pushing out the blue car from the garrage and bringing the other car in the garrage finds support from the statement. Exhibit Public Witness 17/A, of Lal Bahadur Chowkidar, as also from the testimony of R. L. Khana. He having stayed in Moti Mahal Hotel and Flora Hotel admitted by him is corroborated by Sudhir Mehra Public Witness 13, and Darshan Singh, Public Witness 14, whose evidence is supported by entries in the records of their hotels. Their failure, however, to identify Jasbir Singh in the Court is not of much consequence. There is also the statement of Mohd. Iqbal revealing the part played by Jasbir and the amount paid to him which is admitted by Jasbir. Recovery of Car DLI-3325 with secret chamber from house No. D-115 coupled with the recovery of keys of the car, registration book of the car, keys of garrage in C-450, defense Colony of ruqqas Exhibits Public Witness 212-1 to T/5 from Jasbir all go a long way to corroborate his statement. To find further corroboration one has only to refer to the accounts relating to Jasbir recovered from Mohd. Iqbal. The account sheet, torn from a note book, recovered from Mohd. Iqbal tallying with the accounts in ruqqas Exhibits Public Witness 2/T-1 to T-5. The above enumerated facts and circumstances fully justify the order of the Additional Sessions Judge dismissing Jasbir's petition.

(84) As regards Ishtiaq there is ample evidence that he was also known as Madan Lal. This accusation is borne out from the statement of Mohinder Kumar Gupta, House Agent; (P.W. 24), R. C. Kapoor approached him and introducing Ishtiaq as Madan Lal requested Gupta to find a house for Madan Lal, House No. C-450, defense Colony was taken on rent through Mohinder Kumar. Major H. S. Butalia (P.W. 27) owner of house No. D-115, let out his house to Ishtiaq as Madan Lal. Savinder Singh, Public Witness 34, deposed having sold a car to Madan Lal. When asked to identify Madan Lal in Court they correctly pointed towards Ishtiaq.

(85) The statements of Mohd. Iqbal (Exhibits Public Witness 2/W-2 and Public Witness 2/W-5) together with the statement of Jasbir (Exhibit Public Witness 2/W-1A) show that he was conspirator. Jasbir apart from describing the role played by

Ishtiaq, identified him by his address and telephone number which he gave to the customs officers.

(86) It would be appropriate here to note that some of the other petitioners as well were identified by the witnesses in Court. On behalf of the petitioners it was submitted that they had been coming to the Court, the possibility of their being shown to the witnesses could not be ruled out. Their identification in Court was of no consequence.

(87) It is true that the evidence of identification of the accused persons at the trial for the first time, as observed by their Lordships of the Supreme Court in is from its very very nature inherently of a weak character. However, coupled with other evidence it would be a circumstance to be considered against the accused. The fact that a particular witness was able to identify an accused at an identification parade is only a circumstance corroborative of the identification in Court.

(88) Coming back to the allegations against Ishtiaq it may be noted that Jasbir Singh in his statement has averred that gold that he and Kartar Singh used to bring, the same was received by Ishtiaq in Flora and Moti Mahal hotels as also at C-276 and C-450. In the presence of Fazal Ali Khan (P.W. 10) smuggled gold which was taken away by Sahibzada Mian, driver employed by Ishtiaq was returned to him. We have the statement of Kanwal Krishan regarding the delivery of smuggled gold by Ishtiaq for disposal in the market. Kanwal Krishan has proved account in that respect in the account books of Murari Lal Kanwal Krishan. The sale of contraband gold by Murari Lal Kanwal Krishan received from Ishtiaq synchronises with the arrival and stay in Delhi of Jasbir Singh and Kartar Singh. A perusal of the accounts of Murari Lal Kanwal Krishan together with statements of Jasbir Singh and Kanwal Krishan establish that Ishtiaq was a party to the conspiracy.

(89) It was strenuously contended by the learned counsel for the petitioners that according to Brij Mohan (P.W. 33), who worked as a Munim with Murari Lal Kanwal Krishan, he was given beating by the customs officers to coerce him in making a statement favorable to the prosecution. It was accordingly contended that no reliance should be placed on his statement. Further according to him the

transactions of the contraband gold were not done in his presence. His statement was accordingly dubbed as hearsay evidence. It is no doubt true that Brij Mohan has endeavored to get rid of his statement regarding entries existing in the account books of Murari Lal Kanwal Krishan pertaining to the petitioners. But that alone would not be destructive of the prosecution case. It has to be borne in mind that a clever witness in his examination-in-chief fully supports the prosecution case conforming to what he might have earlier stated during investigation but in the cross-examination he introduced a story in a subtle way contradicting the material part of his statement made in examination-in-chief.

(90) Such a design is made for the obvious reason of helping the accused persons for reasons best known to him: Brij Mohan was cross-examined by the prosecution. His statement, Exhibit Public Witness - 25/A, was recorded by a Customs officers on 6th January, 1966. He admits having made and signed the statement. In fact it was recorded by him in his hand. His earlier statement Exhibit Public Witness 26/T was recorded on 19th October, 1964. He admits the same to be in his hand and bears his signatures.

(91) It was in April 1969 that is nearly five years after his first statement and three years after his second statement that he gave a twist by stating that the earlier statements were procured from him by beating him. In between he took no steps to assail his earlier statements. The conduct of such a person would put the court on its guard so as to scrutinize his statement more carefully. But his earlier statements cannot be rejected outright because of the sudden turn taken by him for reasons best known to him to oblige the accused.

(92) A duty is cast on the Courts to sift grain from the chaff. Having carefully looked into the statement of Brij Mohan I am of the opinion that the statements made by him to the customs officers was truthful and it can be relied upon.

(93) The arrival of Ishtiaq in D-115 at 10-30 p.m. and of Jasbir Singh with car Dli 3325 on the morning of 18th October, 1964, is borne out from the statement of Lal Bahadur Chowkidar, Exhibit Public Witness 17/A. In his statement Exhibit Public Witness 20/B Ishtiaq admits having a telephone with No. 265227 which was being used by Mohd. Iqbal. He also admits having known Kartar Singh one of the co-

accused who absconded at the time of raid in D-115. The revision petition of Ishtiaq, in the circumstances enumerated above, was rightly rejected.

(94) It may be stated here that the learned Additional Sessions Judge having discarded the statement of Mohd. Iqbal made the present recommendation for quashing charges framed against the other petitioners on the ground that 'there is no incriminating primary evidence' against them. Since I have in an earlier part of this judgment held that the statement of Mohd. Iqbal can be taken into consideration for the purpose of framing charge against them, the basis on which the recommendation was made, therefore, cannot be sustained.

(95) So far as Harpal Singh is concerned there is documentary evidence on record that during the months February to April 1964 calls were made to Amritsar at telephone No. 43798-PP Harpal Singh, as per statements of Amrit Lal Kalia (P.W. 22) and Goverdhan Dass (P.W. 29). Two of the calls were made from Ishtiaq's telephone No. 225227 and Harbans Lal's telephone No. 221872. Sudhir Mehra, Manager, Flora Hotel, proved stay of Harpal Singh in April 1964 in the Hotel vide copy of entry Exhibit Public Witness 13/A-1 from the hotel register Exhibit Public Witness 13/A. Earlier on 26th October, 1963, Jasbir Singh stayed with him in the same room and a consolidated bill for the stay of both was prepared. No doubt this pertains, to the year 1963, that is before the period during which he is alleged to have entertained the common intention with others but from this fact a reasonable inference can be drawn that he was not only known to but was on intimate terms with Jasbir Singh. On behalf of Harpal Singh it was contended that the above evidence was not sufficient to infer that it refers to Harpal Singh petitioner. There is no merit in this submission. That Harpal Singh was engaged in smuggling activities is borne out from the testimony of R. L. Khana. Harpal Singh had been arrested under the defense of India Rules. R. L. Khana was unable to remember the exact period of detention but so far as he remembered it was a part of the year 1964. The above evidence sufficiently connects Harpal Singh with the conspiracy. The role played by him in the conspiracy has been revealed by Jasbir Singh and Mohd. Iqbal in their statements. He used to bring gold to Delhi in D.L.I. 3325 along with Jasbir Singh. The charge framed against him is supported by the oral and documentary evidence on the record.

(96) In respect of Harbans Lal there is the testimony of the telephone department officials that calls were made at Amritsar telephone No. 43798-PP Harpal from the above-stated telephone number of Harbans Lal. Mohd. Iqbal in his statement had given the telephone No. of Harbans Lal as 221872 stating that he had been contacting him at that number. Mohd. Iqbal used to make calls from Harbans Lal's telephone at Amritsar telephone No 43798. According to Mohd. Iqbal during the period January 1964 to April 1964 sales of contraband gold were made through him. R. L. Khana has categorically stated that no other person by the name of Harbans Lal lives in Prem Gali. Complicity of Harbans Lal is fully established.

(97) It was contended that telephone No. 221872 is not in the personal name of Harbans Lal and as such the prosecution evidence deserves to be discarded. There being direct and positive statement of Mohd. Iqbal on this aspect coupled with his statement that contraband gold was supplied to him for sale during the period January to April 1964 the contention has to be negated.

(98) So far as the case of Kanshi Ram petitioner is concerned there is on record his admission (Exhibit Public Witness 2/W-14) regarding his dealings with Murari Lal Kanwar Krishan albeit the accounts refer to 'silver'. The learned Additional Sessions Judge in his recommendation found himself unable to sustain the charge against him on the ground that the dealings referred to in the account books of Murari Lal Kanwar Krishan pertained to silver and not gold. It has to be borne in mind that in shady dealings of the type in which the petitioners were engaged they would obviously be not making correct entries and would devise various methods to escape criminal liability. The fact that Kanshi Ram was unable to explain the accounts in his name in the books of Murari Lal Kanwar Krishan is by itself sufficient to hold that though the transactions were shown in respect of silver in fact the same were in respect of gold. He admits his partnership with Prem Shankar in shop No. 1210, Chandni Chowk Delhi. Prem Shankar vide Exhibits Public Witness 23-A and Public Witness 2/W-11 admits brokerage business in gold in partnership with Kanshi Ram between January and April 1964. Besides, Prem Shankar has admitted receipt of contraband gold by him and Kanshi Ram from Kanwar Krishan of Murari Lal Kanwar Krishan in May and June 1964. Further, in his statement Exhibit Public Witness 2/W-11 Prem Shankar has also

admitted that they knew that Murari Lal Kanwar Krishan dealt in contraband gold. P.W. 23 R. K. Khanna identified Kanwar Krishan, Murari Lal and Kanshi Ram, as also Prem Shankar. He was not cross-examined in that respect. Complicity of Kanshi Ram is borne out from extracts of accounts, Exhibit Public Witness 26/J, from the books of Murari Lal Kanwar Krishan. Entries in the Rokar dated 10th June 1964, of the said firm Exhibits Public Witness 10/B and Public Witness 10/D also implicate Kanshi Ram. Sansar Chand and Lachhman Dass Public Witness s. corroborate the statement of Prem Shankar. In the premises the charge framed against him cannot be said to be without basis.

(99) As regards Daya Shankar we have the testimony of R. L. Khana who was keeping surveillance on premises D-115, defense Colony, New Delhi. According to him on the morning of night between 17/18th October, 1964, car No. 3325 arrived and was parked outside the premises of the said building. Subsequently, the car was taken into the garrage by taking out car No. 7670 which was earlier parked in the garrage. Soon after one basket, one tin and one bundle was brought out from the garrage and placed on the rear seat of car No. 7670 Khana heard Ishtiaq Ahmed alias Madan Lal talking to somebody from the telephone installed in the repair garrage of the petrol pump near D-115. Madan Lal addressed the man on the other end of the phone as 'Daya' asking him to meet at some place. In the meantime Car No. 7670 with the said articles was driven away. He followed the said car. Car No. 7670 was driven to the house of Daya Shankar where the articles carried in it were delivered.

(100) According to Shri Khana Mohd. Iqbal was carried to the house of Daya Shankar on 18th October, 1964 where they found Daya Shankar. Mohd. Iqbal identified Daya Shankar. Further evidence against Daya Shankar is found in an entry in the account books of Murari Lal Kanwar Krishan (Exhibit P- W. 26/Q), which entry is admitted by Brij Mohan to be in his hand. The allegations against Daya Shankar petitioner are also borne out from the statement of Mohd. Iqbal. According to him two baskets were taken out of car No. Dli 3325 which were placed in car No. 6750 and the said goods were carried to the house of Daya Shankar in Gandhi Gali.

(101) It was vehemently contended on behalf of Daya Shankar that no reliance should be placed on the statement of Shri R. L. Khana as the car in which Khana was following, did not enter into the Gali and was parked outside it. Further, according to Khana it was Madan Singh the driver of his car who was instructed to follow Mohd. Iqbal up to the house of Daya Shankar. The driver of the car having not been produced, it was submitted, Khana's testimony was not worthy of any credence.

(102) There is no force in this contention. Mohd. Iqbal having admitted to have gone to the house of Daya Shankar coupled with the fact that the prosecution has undertaken to produce Madan Singh the driver of the car in which Khana was following car No. 7670, no discernible reason exists on the record not to rely on the statement of R. L. Khana whose statement finds corroboration from the statement of Mohd. Iqbal.

(103) So far as the case of Har Nath petitioner is concerned, he in his statement Exhibit P. W. 26/A has admitted his dealings with firm Murari Lai Kanwar Krishan. Brij Mohan has proved extracts of the account. Exhibit Public Witness 2610, of Har Nath with the above said firm. Although Har Nath has tried to explain the account by alleging that the amounts mentioned therein were on account of moneys borrowed by him from the said firm, a careful perusal of the account, however, belies his Explanation. The alleged oral loans in the account are heavy amounts mentioned at short intervals. It is not possible to support the assertion of Har Nath that the said accounts pertain to the moneys which he had been raising as loans from Murari Lai Kanwar Krishan. There being evidence that Murari Lai Kanwar Krishan dealt in smuggled gold and also the fact that Har Nath was a broker, it cannot be said that there is no ground to sustain the charge against him.

(104) This brings me to the case of Hari Chand, Gian Chand, Jagdish, Nand Kishore, Kedar Nath, Shiv Shankar and Sant Lal, who are alleged to have acted as brokers in the disposal of the contraband gold. From the account books recovered from firm Murari Lal Kanwar Krishan we find entries made in the said account books in the name of the above said petitioners. Exhibit Public Witness 26/L&M; is an extract of account pertaining to Hari Chand. Further, extracts of

account, Exhibit P. W. 26/S, Public Witness 26/F, P. W. 26/D, P. W. 26/B, and Public Witness 26/E, are in respect of Gian Chand, Jagdish, Nand Kishore, Kedar Nath, Shiv Shankar and Sant Lal petitioners respectively. P. W. 26 has identified these persons. Besides, Brij Mohan P. W. 33 Munim of Murari Lal Kanwar Krishan has proved the above said entries pertaining to these persons in the account books of the said firm. The mere fact that in his cross-examination at page 113 Harbans Singh admitted that he could not rule out the possibility of other persons with the same names doing gold business would not be destructive of the prosecution evidence against these persons. Brij Mohan has indentified them as Dalals working in the Bullion Market Delhi.

(105) It may bear mention here that it was not put to Harbans Singh and Brij Mohan on behalf of these petitioners that they were not the persons named in the account books of Murari Lal Kanwar Krishan.

(106) A prima facie perusal of the accounts and the statements of the said witnesses unmistakably shows that these persons were disposing of the smuggled gold obtained by Kanwar Krishan petitioner from Ishtiaq and Mohd. Iqbal. It is not necessary for them to know that who smuggled the gold to this country and who took out the sale proceeds outside this country. Neither it was necessary for them to know who were the other members of the conspiracy but because of the part played by them, namely, disposal of smuggled gold, a justifiable inference can be drawn that they were members of the conspiracy. There being sufficient circumstantial evidence against them, the charges were rightly framed against them.

(107) On behalf of Hari Chand petitioner it was contended that he had been referred to in the account books by various names, i.e., Hari, Hari Lambu and Hari Dalal. That being the state of evidence, it could not be said that the prosecution had proved its case against Hari Chand.

(108) Likewise on behalf of Sant Lal it was contended that the only evidence against him was that of Brij Mohan P. W. Entry made in the account books of Murari Lal Kanwar Krishan, copy Exhibit P. W. 26/G, pertains to Mahavir Santia but the prosecution, it was submitted, has not been able to prove that it pertained

to Sant Lal. Further, P. W. 17, Shri Nayar, did not state that he knew Sant Lal as he stated in respect of the other accused persons.

(109) There is no force in this argument. It was not put to Brij Mohan that the entries existing in the account books of Murari Lal Kanwar Krishan in respect of Hari Chand and Sant Lal pertained to persons different than the said accused.

(110) The learned Additional Sessions Judge while making the recommendation for quashing the charge in respect of the above named persons was chiefly influenced by the fact that in none of the entries in the books of account of Murari Lal Kanwar Krishan the address or even the parentage of any of the petitioners was given. Further, from the entries it was not possible to know if the figures entered therein against certain dates were the figures of rupees or some thing else.

(111) The above-said reasoning fails to take note of the fact in shady transactions the parties with a view to concealing their identity would not reveal their address and parentage and except for mentioning the figures would refrain from stating whether the figures pertained to rupees or something else.

(112) The learned Additional Sessions Judge was further influenced by the fact that Brij Mohan had stated that the entries pertained to the dealings in silver and not gold. Again he failed to take note of the fact that the transactions pertained to the smuggled goods and, therefore, the petitioners would have taken care to describe the transactions in respect of a different article than the one to which actually it pertained.

(113) The statement of Kanwar Krishan recorded under section 108 was ruled out from consideration on the ground that the said statement could not be relied on against his co-accused, i.e., the petitioners.

(114) In Mohd. Hussain Umer Kochra's case (25) (supra) it was observed that if several accomplices simultaneously and without previous concert give a consistent account of the crime implicating the accused the Court may accept the several statements as corroborating each other. The only rider being that the

statements of the accomplices should be proved to have been given independently and without any previous concert. That being the position in law the statements of Kanwar Krishan, Mohd. Iqbal and Jasbir Singh cannot be excluded from consideration. Kanwar Krishan in his statement had admitted having sold smuggled gold valuing about Rs. 48 lacs during the period January to June 1964 through various brokers whose names are mentioned in their account books. The names mentioned in their accounts books are none else but that of the petitioners.

(115) This brings me to the case of Mange Lal Jain who according to the prosecution was also known as Mama, and that of Laxmi Pat Chauraria.

(116) N. K. Nayar (P.W. 17) has identified Mange Lal Jain stating that in trade circles he was known as Mama and that he was available at telephone No. 222086. R. L. Khana to a Court question also gave his telephone No. as 222086 and stated that from the said telephone No. of Mange Lal calls were made to Bombay at telephone No. 70204. P.W. 22 Amrit Lal Kalia Revenue Inspector, Delhi Telephones, in his statement at page 91 and page 92 proved from the record that during the month of January 1964 to the month of October, 1964, calls were made from Mange Lal's Delhi telephone No. 222086 to Bombay at telephone No. 70204 seventeen times on various dates mentioned in his statement, Pp Jain. Telephone No. 70204 in Bombay is of Laxmi Pat Chauraria. Mohd. Iqbal identified Laxmi Pat Chauraria by giving his telephone No. 70204, Mohd. Iqbal knew Laxmi Pat. Mohd. Iqbal on arrival in Bombay from Pakistan borrowed Rs. 4,000.00 from Laxmi Pat Chauraria for making payment to one Mirza. This amount was to be repaid by him in Delhi to Mange Lal.

(117) The telephone calls no doubt were in the name of Mr. Jain but from the frequency of the calls a legitimate inference can be drawn that they were in connection with the conspiracy because these calls synchronised with the period when heavy amounts of money were received by Ishtiaq or Iqbal by way of sale proceeds of smuggled gold from Murari Lal Kanwar Krishan as per accounts of the smuggled gold in their account books.

(118) Harbans Singh (P.W. 26) proved entries (copy Exhibit Public Witness 26/B-1 to B-3) from account books of Sham Lal at pages 31 and 32. Comparing the dates

on which various amounts were received and entered in the aforesaid account books and the dates on which the trunk calls were made from Mange Lal's telephone No. 222086 to Bombay at telephone 70204 as set out below it would be a legitimate inference to draw that the trunk calls provide circumstantial evidence regarding the conspiracy:-

Date of	Amount received	Date of trunk calls	receipt as per	from Mange Lal's
Ex.P.W.26./E-1	Delhi No.	to 70204	Bombay (PP Jam)	25.1.64
				Rs. 66,829.00
27.1.64	27.2.64	Rs. 24,416.00	6.3.64	29.2.64
				Rs. 2,18,858.00
				5.3.64
				Rs.78,643.99
				Rs.77,254.00
				14.3.64
				Rs.13,691.00
				14.3.64
				20.3.64
				Rs.19,491.00
				20.3.64
				23.3.64
				24.3.64
				Rs.43,300.00
				Rs.86,918.00
				27.3.64
				4.4.64
				Rs.2,83,220.00
				4.4.64
				Rs. 92154.00

(119) The above circumstance shows that a justifiable inference can be drawn that the receipts of smuggled gold were sent outside India through Mange Lal and Laxmi Pat. It is no doubt true that the calls at Bombay telephone were made Pp in the name of Mr. Jain. The question for determination, therefore, would be who could be Mr. Jain. It is on record that Mange Lal is Jain, by caste and that Laxmi Pat is his nephew. Obviously, Laxmi Pat would also be Jain by caste with 'Chauraria' as sub-caste. It has to be noted that in the calls made from Delhi telephone No. 222086 to Calcutta during the period January 1964 to October, 1964 Pp was Jain.

(120) Further, Mohd. Iqbal in his statement (Exhibit Public Witness 2/W2) has stated that the sale proceeds of smuggled gold were remitted through Mange Lal Jain whom he identified by giving his Delhi telephone No. 222086. He identified Laxmi Pat by giving his Bombay telephone No. 70204. The telephone calls synchronizing with the receipt of heavy amounts by way of sale proceeds of smuggled gold in Delhi by Ishtiaq from Murari Lal Kanwar Krishan coupled with the statement of Mohd. Iqbal would be sufficient to enable the Court to draw an inference that the sale proceeds of the smuggled gold were remitted through Mange Lal Jain and Laxmi Pat.

(121) According to S. M. Raza (P.W- 2) Mohd. Iqbal had told him that Mange Lal used to dispose of the sale proceeds of smuggled gold either himself or through

his two nephews Laxmi Pat Chauraria residing at Bombay or Punam Chand who was residing at Calcutta.

(122) Exception was taken to the statement of S. M. Raza on the ground that it was hearsay evidence. The objection is without merit. Information revealed to Raza finds corroboration from the circumstantial evidence of various calls having been made from Mange Lal's Delhi Telephone No. 222086 to Bombay and Calcutta as already noted above. It may be noted here that in letter Exhibit P.W. 2/T-2 written by Mohd. Iqbal and recovered from Jasbir Singh there is a reference to 'LP' stating that Mohd. Iqbal had made two efforts to contact him but he was not able to contact him. It is no doubt true that letters 'LP' by themselves would not mean 'Laxmi Pat' but taking into consideration the totality of circumstances and the context in which they were used bearing in mind that in a conspiracy the various conspirators would only use code words, it would be a legitimate inference to draw that the letters 'LP' relate to 'Laxmi Pat'.

(123) It was contended that no reliance should be placed on the prosecution case that Mange Lal's Delhi telephone No. is 222086 as N. K. Nayar Public Witness 17 was unable to give the correct telephone number of Mange Lal. There is no merit in this submission. The mere fact that the said witness was not able recollect correctly the telephone number of Mange Lal at the time of his cross-examination would not be enough to hold that Mange Lal was not concerned in any manner with telephone No. 222086 or that the said telephone number was not in his name. Mohd. Iqbal in his statement had categorically alleged that Mange Lal's telephone number in Delhi is 222086.

(124) It was next sought to be urged that no reliance should be placed on the statement of Mohd. Iqbal to the effect that he borrowed Rs. 4,000.00 from Laxmi Pat in Bombay for one Mirza who had come along with him from Karachi which amount Mohd. Iqbal had agreed to pay to the maternal uncle of Laxmi Pat. The above statement was sought to be discarded on the ground that it stood falsified from documentary evidence on record. The contention being that Mohd. Iqbal in letter Exhibit Public Witness 2/T-5 had mentioned that no sooner he arrived in the night he happened to meet Mirza and had paid him 40, Mohd. Iqbal had further

mentioned in the letter that he had arrived at Delhi on 16th October, 1964. It was accordingly contended that a perusal of the aforesaid statement and the letter would show that they are self-contradictory. According to Mohd. Iqbal's statement Mirza was at Bombay with him whereas letter Exhibit Public Witness . 2/T-5 shows that Mirza met him on his arrival at Delhi on 16th October, 1964. In the premises it was submitted that no reliance could be placed by the prosecution regarding payment of Rs. 4,000.00 to Mirza borrowed from Laxmi Pat as the said fact was not corroborated by letter Exhibit Public Witness 2/T-5.

(125) There is no force in this contention. Mohd. Iqbal's statement reveals that he reached Bombay from Karachi on 13th October, 1964, when Mirza also came along with him. The fact that in letter Exhibit Public Witness 2/T-5 Mohd. Iqbal had stated that no sooner he arrived at Delhi in the night of 16th October, 1964, he happened to meet Mirza and paid him '40' would not show that Rs. 4,000 had not been paid earlier to Mirza at Bombay after being borrowed from 'LP' on 13th October, 1964. or that Mirza thereafter could not leave for Delhi earlier to the arrival of Mohd. Iqbal. May be Mirza had come to Delhi from Bombay after 13th October, 1964, and on 16th October, 1964. Mohd. Iqbal happened to meet him in the night and paid him '40' which may be a different amount from the one paid to Mirza at Bombay.

(126) Another argument was that Mohd. Iqbal in letter Exhibit Public Witness 2/T-1 has stated that he could not contact 'LP' despite efforts which goes to show that 'LP' was someone other than Laxmi Pat Chauraria.

(127) I am unable to accept this argument. Mohd. Iqbal in his statement had categorically averred that he had borrowed four thousand rupees from Laxmi Pat Chauraria at Bombay which was paid to Mirza. Mohd. Iqbal thereafter had come to Delhi by the evening of 16th October, 1964. It is not unnatural that in the normal course of their business transactions he had to contact Laxmi Pat Chauraria again at Bombay and may be despite efforts he was not able to contact of which fact he apprised his principals in letter Exhibit Public Witness 2/ T-2. In the circumstances it cannot be said that letters 'LP' mentioned in Public Witness 2/T-2 do not refer to Laxmi Pat Chauraria.

(128) The learned counsel for these peititoners next contended that in letter Exhibit Public Witness 2/T-2 Mohd. Iqbal had written 'that I shall try that if it could be done through L.P. Perhaps he may agree'. The language of the letter, it was suggested, showed that Laxmi Pat was another person from Delhi. That is why Mohd. Iqbal was trying to contact that other person by the name 'LP' of Delhi.

(129) I am unable to accept this contention. There may be some other proposal which was sought to be put through 'LP' Chauraria of Bombay. He being already known to Mohd. Iqbal that is why Mohd. Iqbal felt sanguine that Lp 'may agree to the proposal'.

(130) It was also suggested that a perusal of the statements of Mohd. Iqbal and Kanwar Krishan showed that they made contradictory statements regarding the sale of gold through Harbans Lal. It was submitted that according to Mohd. Iqbal gold used to be sold by Harbans Lal to whom the gold was given up to April 1964 but after the arrest of Ghulam Sarwar he started giving gold to Kanwar Krishan through Ishtiaq. Further, according to Kanwal Krishan, Mohd. Iqbal used to give gold to him through Ishtiaq for sale from January, 1964.

(131) A perusal of the two statements by no stretch of imagination showed that they are contradictory. The said statements have to be read as a whole in the context in which they were made. The respective statements of Mohd. Iqbal and Kanwar Krishan can be explained and do not appear to be contradictory to each other. Mohd. Iqbal's statement cannot be construed to mean that the entire smuggled gold up to April, 1964 was given to Harbans Lal. All that he says is that after April, 1964 on the arrest of Ghulam Sarwar they stopped giving gold to Harbans Lal, That by itself does not mean that prior to April, 1964 some of the smuggled gold was not being given to Kanwar Krishan.

(132) On behalf of these petitioners it was vehemently contended that Shri A. L. Kalia, Public Witness 22, through whom various calls stated to have been made from Mange Lal's Delhi Telephone No. 222086 to Calcutta and Bombay were got proved, had admitted in his crossexamination that ticket nos. W-373, K-405, Z-597, X-163, R-660, Y-176, M-652, K-753, C-235, C-236, C-245, R-193, A-206 and D-238 regarding Telephone No. 222086 are beyond the period covered by the

summons. It was accordingly submitted that if the said calls are not taken into consideration then the petitioners would be required to explain only three calls, viz., covered by ticket nos. T-887 Z-1301 and H-485. If that be so, it is quite legitimate to infer that the remaining three calls were made in the normal course of human conduct by one relative to another and not in connection with the conspiracy. It was further contended that according to the said witness only tickets pertaining to the latter three calls bore the year 1964 and the rest of the tickets did not bear any year and that he did not have any material with him to prove that all the tickets that he had brought on the basis of which he got his statement recorded, pertained to the year 1964 and that the said ticket nos. did not pertain to any other year.

(133) I am unable to sustain this contention. The fourteen calls, referred to above, were sought to be eliminated on the ground that they pertained to the period beyond the period covered by the summons. This inference was drawn on the basis of the statement of this witness as in his statement the dates on which the said calls were made, were stated to be between 16th November, 1964, to 31st December, 1964. From a perusal of the statement of the said witness at pages 91 and 92 it will be found that while making his statement the witness had referred to ticket number, the destination such as Calcutta or Bombay on which the call was made giving the telephone number, the Pp who was called at that number, besides giving the date on which the call was made. If the fourteen calls are sought to be eliminated on the ground that the period during which the said calls were made was from 16th November, 1964 to 31st December, 1964, there is no reason as to why 17 calls made during the period 2nd January, 1964 to 16th October, 1964, to Calcutta and Bombay as indicated by the said witness at pages 91 and 92 be not taken into consideration. The mere fact that he at the time of making his statement did not have the material with him to prove that the ticket numbers given against those calls bore the year 1964, would not destroy the fact that the calls made in the year 1964 as indicated in his statement made from record.

(134) The learned counsel for the petitioners could not urge any cogent reason to disbelieve the statement of the above-said witness to the effect that the dates

stated by him against the various calls were not the correct dates.

(135) In view of the evidence discussed above the complicity of Mange Lal Jain and Laxmi Pat Chauraria in the conspiracy is amply established.

(136) In view of my discussion on the various points, noted above, there is prima facie evidence against the petitioners to sustain the charge framed against them. The recommendations made by Shri H. C. Goel, Additional Sessions Judge, Delhi are accordingly declined. In the result. Criminal Revisions 382 to 393 of 1971, 114 and 85 of 1972 and Criminal Misc. (M) 136 of 1972, are dismissed.

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