

shall not be again opened without the permission of the appropriate officer; and when any such goods have been opened with such permission, the packages shall, if he thinks fit be again sealed or marked.

Section 107 provides for the application for clearance of goods and section 109 provides for re-assessment on alteration of duty. In India also similar provision can be found under the Customs Act, 1962. In case when the petitioner applied for the clearance of the warehouse goods for home-consumption, they could not obtain the release of the goods until the appropriate officer granted clearance under the Act. It was held that unless and until the goods are cleared for removal from the bonded warehouse and become capable if utilised for the purpose for which the import took place the process of importation into India is not completed. The Calcutta High Court held that only when the process is completed the goods became chargeable to duty under section 12 (1) at the then prevailing rates. (1981) 1 Cal HN 369 C.F. AIR Manual, Fourth Edition, Volume 15 page 98.

48. The entire scheme of the Customs Act shows that the main concern of the Customs Authority is to augment the revenue by levying tariff duties under the Customs and Tariff Act and for preventing smuggling. For example, section 156(54) says if any warehouse goods are opened clandestinely in the absence of appropriate officer, such owner or person shall in every such case, be liable to a penalty not exceeding five thousand rupees. Again, in item 70—if the owner of any baggage fails to make a correct declaration of its contents or fails to produce the baggage for examination etc. the law provides for a penalty not exceeding three times the valuation of the goods in

and such goods shall also be confiscated. Again item 2 provides for various types of offences which are visited with punishment of penalty not exceeding two thousand rupees and confiscation of such goods. Item 8 deals with smuggling which provides of penalty for confiscation of goods and also penalty not exceeding 10 times the value of the goods and upon conviction to imprisonment. "Smuggling" is defined in section 2(S)—to bring into or take out of Bangladesh in breach of any prohibition for restriction for the time being in force, or evading payment of customs duties or taxes leviable thereon and includes an attempt or abatement or connivance of so bringing in or taking out such goods.

49. When the cassettes arrived at Sylhet, a bill of entry was filed and Masuk Ali subsequently obtained an import permit but still the Assistant Customs Officer did not release the goods and they were taken into Customs Warehouse and the process of importation is not yet complete. The law is that warehouse can only be inspected by the owner to see condition of his goods and that must be in the presence of the Customs Officer. Again only the Customs Officer can inspect the packages which are lying in the Warehouse. The contention of the Anti-Corruption Officer that he has also been authorised to inspect goods on the ground that an offence has already been committed under the Customs Act and therefore the Notification empowering the Anti-Corruption Officer to inquire and investigate the offence of the Customs Act confers the jurisdiction is not tenable in law because s. 156(55) provides if any warehoused goods are opened in contravention of the provisions of section 92 the penalty is that such goods shall be liable to confiscation. In other words, section 92 only authorises the appropriate officer of the Customs. Appropriate officer

can open and examine the goods or packages

ledged in any warehouse and it is he and he alone who can open or examine and the law provides for sealing and unsealing by him. Here if the Anti-Corruption Officer in the purported exercise of power under the Notification intends to open the packages which he intended to do, then he brings it at once within the mischief of item 55 which says such goods shall be liable to confiscation.

50. The position becomes absurd. Suppose if the goods are not liable to confiscation, and still in the warehouse for the purpose of ascertaining or assessing of duty. Any inspection caused by the Anti-Corruption Officer in exercise of purported jurisdiction may result in the confiscation of the goods although duty of the goods had not been adjudicated. This clearly shows that the intentment or empowering the Anti-Corruption Officer to inquire or investigate into the offence of Customs Act can mean only when the offence is complete. In the case of *Vasantlal Ramchoddas Patel and others vs. Union of India and others*, A.I.R. 1967 Bombay 138 an officer of the Enforcement Directorate obtained a search warrant from the Chief Presidency Magistrate, Bombay under section 19 of the Foreign Exchange Regulation Act authorising him to search shop No. 157 at Mumbadevi Road, Bombay and seize incriminating documents etc. for the purpose of the enquiry into offences under sections 4, 5 and 9 of the said Act. No incriminating document or other materials were found. However, one Patel was then present in the shop and he was searched and four packets containing diamonds, believed to be foreign cut diamonds, were found in his person. They were, therefore, seized. One of the Enforcement Officers then telephoned to a Customs officer about the seizure of the diamonds and two Customs Officers went there but as the diamonds had already been taken charge of and also

sealed they did not themselves seize them. They, however, started holding investigation in regard to these diamonds. The packets of diamonds remained in the custody of the Enforcement Directorate till 4th September and on that date the two Customs officers took charge of the diamonds from the Enforcement Directorate and seized them under section 110 of the Customs Act. The appellant applied to the Magistrate for orders directing the officer of the Enforcement Directorate to return the diamonds to them. It was urged on behalf of the Enforcement Directorate that the Diamonds had not been seized in pursuance of the search warrant issued by the Presidency Magistrate but that they had been seized under section 151 of the Customs Act, 1962 read with a Notification issued, by the Central Government on 23.5.64. The matter came before the Bombay High Court, the learned Chief Justice considered that the seizure by the Enforcement Directorate was illegal and observed as under:

"Section 151 of the Customs Act empowers the officers mentioned in the section to this Act. The officers of the Enforcement Directorate acted under this section read with the Notification issued by the Central Government on 23rd May, 1964, when they seized the diamonds claimed by the appellants on 23rd and 24th July, 1964. Mr. Sorabjee, the learned Counsel for the respondents has, however, fairly conceded before us that he is unable to justify the seizure of the diamonds under the provisions of section 151. No other provision of law has been pointed out to us under which the diamonds could have been seized or taken charge of by the officers of the Enforcement Directorate. The

seizure of the diamonds on 23rd and 24th July, 1964 therefore, appears to have been without authority of law."

In the present case the question more or less is the same whether the officer of Anti-Corruption have any power to cause search and seize any goods. Agreeing with the Bombay High Court the opinion is that such power has not been conferred by the Customs Act.

51. It has already been noted that if an offence is committed in respect of any goods then it does not make any difference whether goods are in the Customs Shed or warehouse or they are cleared by the Customs Officer. In the Calcutta Case it has been held even after clearance the Customs Officer can issue show cause notice as to why penalty shall not be imposed if there were any circumstances for doing so. Again, the goods can only be inspected in warehouse by the Customs Officer and thus no process is yet complete as the Calcutta case noticed that unless and until the goods were cleared for removal from the bonded warehouse and become capable of being utilised for the purpose of which import took place the process of importation into India is not complete. Only when the process is completed the goods became chargeable to duty under section 12(1). In this view of the matter, the opinion is that the Anti-Corruption Officer had acted prematurely and there was no occasion for his inquiry or investigation with any offence under the Customs Act.

52. The goods have been imported by Masuk Ali and if such goods are restricted or prohibited the Customs authorities will complete the process for which section 81 provides the procedure and sets time limit but before this process is complete the offence is only committed by Masuk Ali and the Customs officer cannot be made an accused at this stage. He will

be an offender if he is "guilty of wilful breach of the provisions of the Act". The High Court Division could not specify any such provision. The legislature has used the expression "wilful breach". When the goods are not cleared and are still in the Customs shed how it can be said the Asst. Customs Officer is guilty of wilful breach of the provision of the Act.

53. Considering the facts and circumstances of the case the conclusions are as follows:

(1) The Customs Authorities have been given responsibility under the Customs Act and their tasks are assigned by it and no such function has been entrusted on any other functionary of the Government.

(2) The Police like any other can only come to assist the Customs officials and even if they detect any offence committed under the Customs Act, they are obliged under law to refer the matter to the Customs Officers at once.

(3) Neither the Police nor the Anti-Corruption can withhold the contraband goods or release them to the owner without the clearance of the Customs Authority.

(4) The Act empowers the appropriate Officer to cause packages lodged in warehouses to be opened and examined (vide section 92) and no such power has been conferred upon the Anti-Corruption Officer by the Notification dated 23.8.72.

(5) Section 156 (55) makes it an offence if the warehoused goods are opened in contravention of the provisions of section 92. The appropriate officer is defined in section 2(b) and the officer of Anti-Corruption does not answer the description.

(6) Importation of goods is not complete until and unless the whole process of assessment is complete and deposit of goods without payment of Customs duty is permissible

by law and therefore no offence was committed within the meaning of section 156 by the Asst. Customs Officer especially when the goods were not released by him.

(7) Importation of contraband makes the importer liable for both assessment of duty, fine and confiscation (sec. 156(9)(i) and section 17).

(8) There is no estoppel against Statute and as such mere release of the goods by the Customs Officer would not create any estoppel for issuing a fresh show cause notice as to why penalty should not be imposed even after the clearance of the goods.

(9) The function of the Police and the Customs Officer are clearly defined in the respective enactments and any departure or deviation from the defined path will lead to chaos and confusion which emanate from departmental rivalry leading to the bitterness which cannot be said to be a happy augury for a good Government.

54. In view of these propositions of law and in the facts and circumstances of the case, the opinion is that the District Anti-Corruption Officer has misconstrued the notification dated 23.8.72 and in the purported exercise of such jurisdiction attempted to perform certain functions under the Customs Act, e.g. to open the packages which was not conferred on him by law. On the other hand, section 92 specifically confers such power upon the Customs Officer who is the appropriate officer so to do. The action of Anti-Corruption Officer was premature.

In the result the appeals are allowed. Proceedings are quashed and the judgment of the High Court Division is set aside. There will be no order as to costs.

Shahabuddin Ahmed, J.—I have gone through the judgment proposed to be delivered by my learned brother B. H. Chowdhury, J.

I very much regret my inability to agree on his views that the Anti-Corruption Police got no jurisdiction to investigate the offences referred to in the proceedings in question and that facts alleged against the appellant do not constitute any criminal offence either. I also find it difficult to hold that "there is a fine line of demarcation" between the jurisdiction of the Anti-Corruption and Customs Officers requiring that jurisdiction of the Anti-Corruption will begin when process of investigation by the Customs Officers is completed. I find that the Anti-Corruption got jurisdiction to enquire into or investigate any customs-offence as soon as it is committed.

55. Facts of the cases out of which these appeals have arisen have been given in detail in the judgment of my learned brother B.H. Chowdhury, J. I will however refer to the salient points of A.G.R. Case No. 52 of 1980 in which the controversial issues have been raised. In that case accused Mashuk Ali (who has been charge-sheeted under Item (8) of section 156, Customs Act but has been absconding all along and who is not before us) imported, on 12 February 1979, 993 recorded Cassette Tapes contained in two packets from Singapore by an Airways Bill, and on arrival of the plane at Sylhet Airport the goods were carried by the Customs Officers on duty to the Customs Air Freight Godown. These were "contraband goods", since their import into Bangladesh was restricted under law but were brought into Bangladesh without necessary permit from the Controller of Imports and Exports. The District Anti-Corruption Officer having got secret information that attempts were being made to get these goods released wanted to verify the contents of the two packets but he was resisted by the Customs Officers including the appellant Reazul Karim, Assistant Collector, who took the ground that since the matter was being dealt with by them under the

Customs Act, the Anti-Corruption got no authority to interfere in the matter. The District Anti-Corruption Officer moved the higher authorities of the Customs Department including the Collector of Customs but was refused permission to verify the goods. The Collector of Customs, on the contrary, initiated a proceeding against the District Anti-Corruption Officer and by an order dated 22 August 1980 imposed penalty upon him for interfering with the function of the Customs Officers. The District Anti-Corruption Officer then moved the National Board of Revenue and by obtaining permission from the Board seized the goods on 30 July 1979 in presence of Customs Officers and proceeded to investigate the offence of smuggling against the Importer, Masuk Ali, but he was not given any co-operation and assistance by the Customs Officers including the appellant who maintained that the Anti-Corruption got no jurisdiction so long they were dealing with the matter having all power to impose necessary penalty upon the Importer including penalty by way of confiscation of the goods and also by prosecuting the Importer of smuggled goods before the Magistrate under the Customs Act. The Importer, in the meantime obtained a Permit from the Assistant Controller of Imports on 9 March 1979 but the Anti-Corruption did not accept the Permit pointing out that the permit was obtained for import of "un-recorded Tapes", whereas the Tapes imported were recorded Tapes and contending that this ex-post-facto permit was also obtained by practising 'fraud' at which the Customs Officers connived. In these circumstances the District Anti-Corruption Officer lodged a First Information Report on 10 October, 1979, investigated the offences and submitted charge sheet on 14 October, 1980 against the Importer, Masuk Ali under section 156(3) and against the

appellant and two other Customs Officers under sections 156(81) and (82) of the Customs Act. It has been alleged in the charge-sheet that accused Masuk Ali committed smuggling, whereas the accused Customs Officers who were employed for the prevention of smuggling committed wilful breach of the provisions of the Customs Act laid down for prevention of smuggling and that these Customs Officers committed or abetted or connived at the commission of fraud for the purpose of injuring the Customs-revenue.

56. These proceedings were sought to be quashed under section 561A of the Criminal Procedure Code, but a Division Bench at Comilla by their order dated 2 November 1982 refused to quash the proceedings rejecting all the contentions of the appellant that the Anti-Corruption got no jurisdiction to investigate the offences so long the Customs Officers were dealing with the matter and that facts alleged did not constitute any offence under the Customs Act. Leave was granted to consider whether the impugned order of the High Court Division was based on correct interpretation of the relevant provision of law and proper appreciation of the facts of the case.

57. It should be noted first of all that the charge-sheet has been submitted against the Importer under Item (8) of section 156 for committing smuggling on 12 February 1979 and against the appellant and other two Customs Officers under Items (81) and (82) of section 156 for wilful breach of statutory provisions and fraud in the period between 12 February 1979 and 10 October 1979 by certain acts and omissions in connection with the "prevention of smuggling" as described in Chapter XVIII of the Customs Act. Of the four accused persons charge-sheeted, only one, namely the appellant, Assistant Collector of Customs, has challenged the proceedings by these appeals. Though

the accused Importer is not challenging the proceedings against him, the entire proceedings have been challenged in these appeals on the ground that the Anti-Corruption got no jurisdiction to investigate the offence against the Importer or move into action unless and until the process of enquiry/investigation started by the Customs Officers is brought to a conclusion. That is why, it is found, the appellant Customs Officer resisted the Anti-Corruption from verifying or seizing the contraband goods when it was brought into the Customs Godown.

58. Mr. Mainul Hossain, learned Advocate for the appellant does not say that the bringing into Bangladesh of the contraband goods in question did not constitute 'smuggling' as defined in clause (3) of section 2 of the Customs Act, 1969.

'Smuggling' as defined there "means to bring into or take out of Bangladesh, in breach of any prohibition or restriction or evading payment of customs-duties of any goods".

There is no dispute that Recorded Cassette Tapes were notified in the Official Gazette as goods which could not be imported in to Bangladesh without permit from the Controller of Imports and Exports under the Bangladesh (Imports and Exports) Control Act, 1950 or that these Recorded Tapes were brought by accused Masuk Ali into Bangladesh without any permit. As such, this bringing into Bangladesh of the goods in question in violation of statutory provisions constituted "smuggling" on 12 February 1979. That permit was obtained subsequently will not have any effect upon the operation of law; the authorities however may not proceed against the importer in view of explanations given for not obtaining the permit prior to the importation. In the instant case, the permit obtained on 9 March 1979 also did not cover the goods actually imported

since these are admittedly recorded Tapes as against un-recorded Tapes for which the permit was obtained. But Mr. Mainul Hossain's contention is that the Anti-Corruption cannot move into action so long the Customs Officers are dealing with the matter. It is to be seen whether the Anti-Corruption got jurisdiction to inspect and seize the smuggled goods and start investigation. They claim jurisdiction to investigate the Customs offences as described in section 156 of the Customs Act under the Anti-Corruption Act, 1957 (Act XXVI of 1957). This Act has given jurisdiction to any appropriate officer of the Bureau of Anti-Corruption to investigate the offences included in the Schedule of that Act and also "offences notified by the Government". By a Notification dated 23 August 1972 Customs offences were brought into the Schedule of the Anti-Corruption Act. Mr. Mainul Hossain contends that all Customs offences as mentioned in section 156 of the Customs Act shall be first enquired into or investigated by the Customs Officers, and that, after their process of enquiry/investigation is completed then only the Anti-Corruption will have jurisdiction to enquire into or investigate these offences, for simultaneous investigation by the Anti-Corruption will interfere with the statutory functions of the Customs Officers under the Customs Act. Mr. Mainul Hossain has referred to various powers and functions of Customs Officers under the Customs Act to deal with any goods whether imported legally or in violation of law, including the power not only to confiscate any goods and impose penalty for any breach of law, but also to investigate any offences for the purpose of prosecuting the offender before the Magistrate.

59. Mr. Molsudur Rahman, learned Deputy Attorney-General, has, on the other hand, pointed out that the Anti-Corruption does

not seek any jurisdiction for investigation of customs offences from the Customs Act but they claim jurisdiction from an independent special statute, namely, the Anti-Corruption Act. He has contended that under this Act any officer of the Bureau of Anti-Corruption may move into action as soon as any cognizable offence, such as 'smuggling' is committed or even suspected to have been committed. He has explained that by the Notification of 23 August 1972 the offences under section 156 of the Customs Act have been brought within the ambit of the Anti-Corruption Act. He has further contended that there is no provision in the Customs Act barring jurisdiction of the Anti-Corruption or of the General Police who got powers of investigation under section 5(2) of the CrI. Procedure Code.

60. To appreciate these contentions I would refer to the power and functions of the Customs Officers under the Customs Act and the impact of the Notification amending the Schedule of the Anti-Corruption Act, 1957. The Customs Officers have been given jurisdiction, power and authority to deal with the Customs offences under section 156 of the Customs Act, 1969. These functions may be divided into two categories. In one category will come the powers to deal with any offence by confiscating the goods and imposing penalty which may extend upto ten times the value of the goods. This penalty shall be imposed by the "appropriate custom officer" without bringing the matter to any Court of law. The other category includes those offences which must be brought before a Magistrate for trial. The Customs Officer may enquire into or investigate such offences and submit a report to Magistrate who thereupon may take cognizance and after convicting the accused, if found guilty, impose the punishment either by way of imprisonment or by fine or by both, as mentioned in the

relevant items of section 156. This section contains 98 items of offences and some of these items have got off-shoots increasing thus the number of offences beyond 98. All these items excepting 15 items relate to offences for which the Customs Officer alone is competent to impose penalty by confiscation. In those matters there shall be no investigation for prosecuting the offender. The remaining 15 items such as Items numbers 8, 77, 79, 81, 82, 83, 86, 87, 89, 91, 92, 93, 94, 97 and 98, are offences which must be tried by a Magistrate; and though no specific provision has been made in the Act as to how the prosecution will be launched before the Magistrate for securing conviction of an offender, it is necessarily implied that the Customs Officer, who has been given power to enquire into and investigate these offences, will bring the allegation before the Magistrate in the form of a report or complaint. Again, out of these 15 offences some are not only punishable by a Magistrate, but also they are punishable by the "appropriate" Customs Officer by way of confiscation in addition to conviction and punishment by the Magistrate. As for example, Item No. 8 may be mentioned. It says "If any goods be smuggled into or out of Bangladesh, the punishments are that :

"Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Magistrate he shall further be liable to imprisonment for a term not exceeding six years and to fine not exceeding ten times the value of such goods, and, if the Magistrate in his discretion so orders, also to whipping."

The power of investigation for the purpose

of prosecuting the offender before a Magistrate is quite distinct from power of enquiry or investigation for confiscation of any goods and imposition of penalty by the Customs Officer. In these two kinds of cases, the general police, such as the Officer-in-Charge of a Police-Station, has been given a limited power, that is, to come in aid of the Customs-officer. The police may seize any goods or arrest any person on reasonable suspicion but he shall immediately report the matter to the Customs Officer so that the goods seized or the person arrested may be dealt with by the Customs Officer in either of the manners as discussed above. In the instant case, the Anti-Corruption are not claiming any power of investigation under the Customs Act. They are claiming power to investigate the customs offences under the Anti-Corruption Act, 1957.

61. The Anti-Corruption Act provides for constitution of a Bureau to be called "Bureau of Anti-Corruption". Section 3 defines its power in the following words :

"3. Constitution and Power of the Bureau.—(1) Notwithstanding anything contained in the Police Act, 1861 (V of 1861), the Government may constitute a Bureau to be called the Bangladesh Bureau of Anti-Corruption for enquiry into and investigation in Bangladesh of, the offences specified in the schedule and offences notified by the Government.

(2) Subject to any orders which the Government may make in this behalf, officers of the Bureau shall have throughout Bangladesh in relation to the enquiry into, and investigation of, such offences all powers of seizure, search and arrest of persons concerned in such offences and all other powers, duties, privileges and liabilities which the police officers of Bangladesh have in connection with

the investigation of such offences."

The Schedule as referred to in sub-section (1) of section 3 did not originally contain the offences under the Customs Act, but in exercise of powers conferred upon it by sub-section (1), the Government subsequently added the offences punishable under section 156 of the Customs Act to the Schedule by the Notification dated 23 August 1972 as already referred to. It is, therefore, clear that the Anti-Corruption has been given jurisdiction to investigate the customs offences by the Anti-Corruption Act; it will not be correct to say that the Anti-Corruption is claiming jurisdiction merely under a Notification. This Notification is a statutory one and the offences "notified" thereunder are part and parcel of the main statute, namely, the Anti-Corruption Act. According to an express provision of law, namely, section 3 of the Anti-Corruption Act, the Anti-Corruption Officer exercised jurisdiction to investigate the offence of 'smuggling' which was prima facie committed by the Importer Masuk Ali on 12 February, 1979. In a cognizable offence the police got right to move into action the very moment it is committed and unless investigation by the police is barred by any express provision of law the investigation cannot be questioned or interfered with. That the Customs Officer got similar jurisdiction to deal with the customs offences does not stand in the way of the investigation by the Anti-Corruption. Acceptance of Mr. Hussein's argument that the Anti-Corruption shall not exercise their jurisdiction unless the Customs authorities give clearance will lead to the drawing up of an arbitrary line of demarcation between them at the sweet will of the latter. Reference has been made to some decisions of the Indian jurisdiction. Those decisions are founded on the Customs Act only as there is no law in India correspon-

ding to the Anti-Corruption Act of Bangladesh covering customs offences. In India, customs offences continue to be enquired into and investigated under the Customs Act.

62. Now the question is whether the charge-sheet under items 81 and 82 of section 156 against the appellant (and for that purpose against the other two Customs Officers) is sustainable in law in the facts and circumstances of the case, although the Anti-Corruption got jurisdiction to investigate the alleged offences against them also. These allegations are that the Customs Officers were duly employed to take measures to prevent smuggling but although the Cassette Tapes were prima facie smuggled into Bangladesh on 12 February 1979 these officers did not seize the goods at once under section 17 or arrest the Importer under section 161 or issue any notice for confiscation of the goods under section 180 of the Customs Act. These sections run thus :

"17. Detention and confiscation of goods imported in breach of section 15 or section 16.—Where any goods are imported into or attempted to be exported out of Bangladesh in violation of the provisions of section 15 or of a notification under section 16, such goods shall without prejudice to any other penalty to which the offender may be liable under this Act, or any other law, but subject to rules, be liable to detention and confiscation."

"161. Power to arrest.—(1) Any officer of customs authorised in this behalf who has reason to believe that any person has committed an offence under this Act may arrest such person.

(2) Any person duly empowered for the prevention of smuggling who has reason to believe that any person who has committed an offence of smuggling

under this Act may arrest such person."

"180. Issue of show-cause notice before confiscation of goods or imposition of penalty.—No order under this Act shall be passed for the confiscation of any goods or for imposition of any penalty on any person, unless the owner of the goods, if any, or such person—

- (a) is informed in writing (or if the person concerned consents in writing orally) of the grounds on which it is proposed to confiscate the goods or to impose the penalty ;
- (b) is given an opportunity of making a representation in writing (or if the persons concerned indicates in writing his preference for it orally) within such reasonable time as the appropriate officer may specify, against the proposed action; and
- (c) is given a reasonable opportunity of being heard personally or through a counsel or duly authorised agent."

63. Mr. Mainul Hossain contends that though the goods were not formally seized, but these were not released either; the goods were taken into the Customs godown, and submission of necessary documents by the Importer was being awaited. Mr. Mainul Hossain has submitted that the Importer did not yet submit his documents without which no action for confiscation of the goods could be initiated. I do not think that this argument will avail, for when the goods were prima facie smuggled, non-submission of the necessary documents connected therewith by the Importer was itself a ground for initiating action for confiscation of the goods. No notice for show cause as to confiscation was issued till the First Information Report was lodged 8 months after the date of importation of the goods. It is argued that the Importer went to the Controller of Imports for obtaining permit with retrospective effect

this was not at all a concern of the Customs Officers who were duty bound to initiate a proceeding for confiscation of the goods which were brought into the country without the required permit; and if any permit were obtained during the proceeding for confiscation, it could have been considered while disposing of the proceedings.

11. Offence under item (81) is committed "if any officer of Customs or other person duly employed for the prevention of 'smuggling' commits wilful breach of any provision of this Act."

The charge-sheet prima facie shows that the appellant committed wilful breach of the provisions of the Customs Act relating to prevention of smuggling as referred to in paragraph 9. As to the offence under item (82), it is committed—

"if any officer of Custom or other person employed for prevention of smuggling, practices or attempt to practice, any fraud for the purpose of injuring the customs-revenue or abets or connives at any such fraud, or any attempt to practice any such fraud."

The charge-sheet shows the presence of the ingredients of this offence, that is the Importer obtained a Permit by falsely representing that the goods imported were un-recorded Tapes. It further shows that the Customs Officers, one of whom is alleged to be the Importer's brother-in-law, by allowing him time and opportunity to obtain the ex-post facto permit, connived at this offence of fraud. This is an allegation; whether the allegation is true or not is to be decided by evidence during the trial.

64. It has been next contended that no injury has been actually caused to the customs-revenue nor any pecuniary advantage has been obtained by the Customs Officers. It should be noted that causing of actual injury to the customs-revenue and the obtaining of pecu-

niary advantage are not the necessary ingredients of the offence under Item (82). Mentioning of these allegations in the charge sheet will not therefore affect the charge-sheet which relates to 'fraud' or its abetment or connivance.

65. The last contention raised by Mr. Mainul Hossain is that the Customs Officers had no mala fide intention to resist the Anti-Corruption in the matter of investigation but they acted under a bonafide belief that they had exclusive jurisdiction to deal with the matter and that their stand was upheld by the highest authority of their Department. This contention is not found to be tenable, for upto the level of the Collector of Customs this contention was maintained; but, thereafter, this contention was not insisted upon. The Board of Revenue allowed the Anti-Corruption to initiate investigation; its Chairman did not express dissent when the Anti-Corruption Council by a Resolution finally decided to prosecute the Customs Officer though he attended the meeting of the Council, the Board also did not think it proper to refuse sanction for prosecution of these Customs Officers. The provision for sanction is intended to protect officers of the Government from harassment by unnecessary, frivolous or malicious prosecution. No prosecution shall lie against these public servants without prior sanction. If the Board of Revenue had reason to believe that these Customs Officers acted bona fide and had no 'mens rea', the Board could have refused sanction for prosecution or if sanction were given by the Government, should have recorded objection. A case of acrimony, grudge and rivalry between the two "departments" is sought to be made out. I do not find any basis for such a contention. When both the Customs Officers and the Anti-Corruption Officers get

concurrent jurisdiction, then the one, in absence of clear provision of law, cannot keep the other away from the field by arbitrary action. The Anti-Corruption Officer is found to have acted under the authority of an independent law. Any action taken in the discharge of duty under law is not interference with the discharge of similar duties of any other Officer. The Customs Officers invoke the Customs Act. Section 156 of this Act itself provides that :

"Whoever commits any offence described in column 1 of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the punishment, mentioned against that offence in column 2 thereof".

66. 'Any other law' as quoted above includes Prevention of Corruption Act, (Act II of 1947), President's Order No. 50 of 1972 in respect of smuggling punishable as a 'grave offence', and Special Powers Act in respect of prejudicial acts affecting economic or financial interest of the State. A custom offence is punishable under these Laws also, even if there were no Anti-Corruption Act in the field. In the face of these legal provisions conferring jurisdiction upon other forums, claim of exclusive jurisdiction by the Customs Officers is without any foundation. I therefore find no ground for quashing the proceedings in A.G.R. Case No. 52. Questions of law raised in the other two cases—A.G.R. Nos. 24 and 53, have been answered in this judgment. These proceedings also cannot be quashed.

In the result, all the appeals are dismissed. But the opinions expressed in this judgment are meant for disposal of the applications for quashing the proceedings. These opinions shall not influence the trial Court in disposing of the cases on merit.

Chowdhury A. T. M. Masud, J.—I have gone through the judgment proposed to be delivered by my learned brother Badrul Haider Chowdhury, J. I regret my inability to agree with his views. It is not necessary to repeat the facts of the case which have been narrated at length in the judgment delivered by my learned brother.

68. In all the three appeals charge-sheets have been submitted against the appellant and some others under section 156(8), (81) and (82) of the Customs Act and section 5(2) of Act II of 1947. It has been urged by the learned Counsel for the appellant that the Bureau of Anti-Corruption had no jurisdiction to investigate the alleged offences against the appellant and that if after adjudication by Customs authority, it is found a case of smuggling and a fit case for prosecution in Court of law, only then the Bureau of Anti-Corruption would be competent to take up the case. The learned Counsel has referred to certain provisions of Customs Act, showing the function, power and duties of the Customs Authority. On an examination of these provisions, it would appear that these relate to levy of customs duties, adjudication, confiscation of goods and penalty that may be imposed by the Customs authority.

69. Section 156 of the Customs Act deals with penal provision for offences defined under the Customs Act. An examination of various items of section 156 reveals that in respect of offence under item No. 8, persons involved in the offence, apart from confiscation and imposition of penalty by Customs authority, are liable to be convicted and sentenced on trial by a Court of law. Similarly, officers or persons involved in offences under items (81) and (82) are liable to be convicted and sentenced on trial. Section 169 of the Customs Act gives power of adjudication to the Customs officers only in cases involving

confiscation of goods or imposition of penalty under the Customs Act.

70. In such cases power of confiscation and penalty under Customs Act vests in the Customs authority but for offences liable to be tried in Court of law procedure has been provided in section 5(2) of the Code of Criminal Procedure.

71. Section 5(2) of the Act reads as follows: "All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Sub-section (1) of section 5 provides that all offences under the Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code.

Offences under items 8, (81) and (82) of section 156 of the Customs Act are cognizable offences as per Schedule II of the Code of Criminal Procedure—entries relating to offence against other law.

72. Police has got statutory right to investigate cognizable offences for which no formal complaint by Customs authority is necessary. As per notification No. PMS/AC-24/ 72-346 dated 23.8.72 of the Ministry of Cabinet Affairs, Prime Minister's Secretariat, Anti-Corruption Section, issued under section 3(1) of the Anti-Corruption Act (E.P. Act XXVI of 1957), the Bureau of Anti-Corruption has been empowered to enquire into and investigate offences punishable under section 156 of the Customs Act, 1969. The Bureau was already empowered to investigate offence under section 5(2) of Act II of 1947. As soon as the Bureau of Anti-Corruption gets any information of has reasons to suspect that an offence mentioned in the schedule of the Act has been committed, they can proceed with enquiry and investigation.

73. There is no specific provision in the Customs Act which debars the Bureau of Anti-Corruption to investigate an offence under the said Act, for which there is provision for conviction and sentence on trial. Offences under items (8), (81) and (82) of section 156 contain such provisions. It may be mentioned in this connection that earlier there was a provision in the Customs Act that no Court should take cognizance of any offence relating to smuggling of goods punishable under item 8 and (81) of section 167 (corresponding to the present section 156 of the Customs Act), except upon complaint in writing made by the Chief Customs Officer or any other officer of Customs not lower in rank than an Assistant Collector of Customs authorised in this behalf by the Customs Collector. This provision, being section 187A of the Customs Act, was inserted by the Customs Amendment Act 1956 (Act XXV of 1956), but this was omitted by the Sea Customs Amendment Act, 1957 (Act XXXIV of 1957) and there remained no longer any legal requirement of complaint by the Customs Authority before cognizance could be taken. Conferment of exclusive powers on Customs authority under certain sections of the Customs Act does not mean that police or Bureau of Anti-Corruption have been debarred to discharge duties entrusted on them by law, more so when there is no specific provision in the Customs Act debarring them to discharge such duties.

74. There is nothing in the Customs Act to hold that Bureau of Anti-Corruption cannot inquire into and investigate offences punishable under section 156 of the Act, unless they are called upon to do so by the Customs authority.

When the aforesaid notification under sec. 3(1) of the Anti-Corruption Act was issued empowering the Bureau of Anti-Corruption

to enquire in to and investigate offences punishable under section 156 of the Customs Act, the relevant authority was fully aware about existing provisions of the Customs Act.

75. For the aforesaid reasons I am unable to accept the contention that Bureau of Anti-Corruption had no authority to investigate and prosecute an offence alleged to have been committed under section 156 of the Customs Act. Sanction has been accorded for the prosecution of the appellant by the Anti-Corruption Council which consists among others of the head of the appellant's department, viz the Chairman, National Board of Revenue.

76. On the materials on record it is difficult to hold at this stage that no *prima facie* case has been made out against the appellant. No case for quashing the proceeding has been made out and the order of the High Court Division calls for no interference.

Syed Md. Mobsen Ali, J.—I have gone through the judgments written by Badrul Haider Chowdhury, Shahabuddin Ahmed and Chowdhury A.T.M. Masud, JJ; I concur with the decision of Badrul Haider Chowdhury, J.

ORDER OF THE COURT

By the majority opinion the appeals are allowed. Proceedings are quashed and the judgment of the High Court Division is set aside. There will be no order as to costs.

Ed.

SUPREME COURT (Appellate Division) (Civil)

Badrul Haider Chowdhury, J., Shahabuddin Ahmed, J., Chowdhury A.T.M. Masud, J., Syed Md. Mobsen Ali, J.
Judgment August 3, 1983.

M/s. Gannysons Ltd. & anr... Appellants
Vs.
Sonali Bank & ors.
...Respondents*

Bangladesh Abandoned Property (Control, Management & Disposal) Order (P.O. 16 of 1972)

Art. 14

Once a property vests in the Govt. under the provisions of P.O. 16/72 no legal proceedings can be taken against such property.

Once any property is declared or treated as abandoned property under the Bangladesh Abandoned Property (Control, Management and Disposal) Order it cannot be subjected to any legal process such as seizure, distress, attachment or sale by any officer of a Court or any other authority and further, that the Government cannot be divested or dispossessed of such properties. (7)

The respondent Bank has failed to show how the decree obtained in the aforesaid suit can be executed in respect of properties which had vested in the Government under the provisions of P.O. No. 16 of 1972. (12)

It is also difficult to understand why, if the loan was obtained by M/s. Gannysons Ltd. before it was treated as abandoned properties,

*Civil Appeal No. 43 of 1983. From the Judgment and Order dated 9th November, 1982 passed by the High Court Division in First Miscellaneous Appeal No. 170 of 1982.

the Bank, instead of proceeding against the directors of the company who continued till it was declared as abandoned, it proceeded against it when it came to be treated as abandoned property by the Government. The Bank wanted to proceed against the properties which were offered as security against the loan obtained by the appellants before it was treated as abandoned property, but in all fairness the Bank should have sought relief against them, particularly when the previous directors were persistently pursuing their remedies for the release of the properties in question (13)

T.H. Khan, Senior Advocate, (M. A. Wahhab Mian, Advocate with him instructed by Md. Aliab Hossain, Advocate-on-Record—For the appellants.

Asrarul Hossain, Senior Advocate instructed by Syed Sakawat Ali, Advocate-on-Record—For the respondent No. 1.

A.W. Bhuiyan, Additional Attorney-General, instructed by B. Hossain, Advocate-on-Record—For the respondent Nos. 2-4.

Judgment

Fazle Munim, C.J.—This appeal arises from First Miscellaneous Appeal No. 170 of 1982 passed by the High Court Division, Dhaka which affirmed the judgment and order of Subordinate Judge, 3rd Court, Dhaka in Miscellaneous Case No. 938 of 1981.

2. Appellant No. 1, M/s. Gannysons Limited was incorporated under the Companies Act in East Pakistan, as it then was, on 19th September, 1962. Appellant No. 2 is a resident Director holding 19,000 shares of the company since 1962. Other Directors are (1) Ashraf A. Gaany, a British national holding 11,500 shares, (2) Mohammad Ali Gaany, a British national holding 10,000 shares, (3) Arif Ahmed, a Baagleshi national holding

3,500 shares and (4) Abdul Wahed Ibrahim, a Baagleshi national holding 5000 shares. Appellant company being the owner and possessor of the building at 35-36, Bangabandhu Avenue mortgaged the said properties with the then National Bank of Pakistan, now Sonali Bank, through their Directors, Mr. Dada Abdul Gani and Md. Yunus Abdul Sattar (both now retired) and appellant No. 2 for cash credit limit of Rs. 4,50,000/-

3. After the emergence of Bangladesh, the aforesaid property which under the trade mark name of "Gannys" were being controlled and managed by appellant No.2 and the members of the staff were taken over by the Government as abandoned property. Properties were taken over including buildings, stock-in-trade and the running business. In spite of the repeated attempts of the Directors of the company the properties were not released by the Government. Representations were made by appellant No. 2 to Sub-Divisional Officer, Dhaka on 10th August, 1972 to the same effect and the other dates on which similar representations were made are mentioned to be 15.4.73, 3.2.74, 4.9.74, 5.12.74, 28. 2.75, 13.12.75, and 14.5.76. Appellant No.2 in reply to his letters received Memo. No. SP (Com) -91/76/266 dated 29th June, 1976 asking him to furnish copies of the aforesaid letters. On 5th July, 1976 appellant No. 2 complied with the request to furnish the copies of their previous letters. Subsequently, appellants wrote letters on 5.10.76, 16.11.76 and 21.12.76 to the Secretary, Ministry of Commerce. By their Memo. No. SP (Com)-91/76/706 dated 11th January, 1977 the Ministry of Commerce directed the appellant to approach the prescribed Authority under the the President's Order No. 16 of 1972. In reply, appellant No. 2 apprised the Secretary, Ministry of Commerce that they have already made representations to the prescribed Authority