



**NON-REPORTABLE**  
**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). 1000 OF 2012**

**AMAD NOORMAMAD BAKALI ....APPELLANT(S)**

**VERSUS**

**THE STATE OF GUJARAT  
& ORS. ....RESPONDENT(S)**

**WITH**

**CRIMINAL APPEAL NO(S). 1232-1237 OF 2012**

**J U D G M E N T**

**Mehta, J.**

1. Heard.
2. These two appeals arise from common judgment dated 21<sup>st</sup> December, 2010 passed by the learned Single Judge of the Gujarat High Court at Ahmedabad<sup>1</sup> in Criminal Revision Application No. 381, 385, 386, 387, 388, 389, 390 of 2005 whereby,

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<sup>1</sup> Hereinafter being referred to as “High Court”.

the revisions preferred by the original accused Nos. 1, 2, 3, 5, 6, 7 and 11 were dismissed and their conviction for offence punishable under section 135(1)(b)(i) of the Customs Act, 1962 was affirmed.

**3.** The details of revisions preferred by the original accused persons are noted hereinbelow:

<b>Revision</b>	<b>Preferred by</b>
Criminal Revision Application No. 381	Amad Noormamad Bakali (accused No. 2)
Criminal Revision Application No. 385	Aamad Alimamad Paleja (accused No. 1)
Criminal Revision Application No. 386	Anwarali Abdula Sama (accused No. 5)
Criminal Revision Application No. 387	Chamanlal Kakubhai Thakkar (accused No. 7)
Criminal Revision Application No. 388	Ismail Alimamad Paleja (accused No. 3)
Criminal Revision Application No. 389	Ismail Ibrahim Mandhara (accused No. 11)
Criminal Revision Application No. 390	Abdul Jumma Mandhara (accused No. 6)

**Brief Facts: -**

**4.** The case of the prosecution in brief is that secret intelligence was received by the Customs officers at Mandvi indicating that prohibited smuggled foreign wrist watches had been concealed near a fisherman's jetty. Specifically, it was reported that two jute sacks

containing smuggled wrist watches of foreign brands such as Seiko, Citizen, and Ricoh were concealed in two pits located on a newly laid road, opposite to the Mandvi Gram Panchayat Rest House. Acting on this intelligence report, on 30<sup>th</sup> April, 1985 at about 9:00 p.m., Customs officers from Mandvi, accompanied by two independent *panch* witnesses, proceeded to the site and conducted a search. During excavation of the pits, two jute sacks were recovered. One sack contained ten packets, while the other contained seventeen packets. Based on their packaging, quantity, and nature, the Customs officers formed a reasonable belief that the contents were smuggled foreign wrist watches. The seized sacks were then shifted to the Customs House, Mandvi, where, in the presence of *panch* witnesses, they were opened and examined. Upon close inspection, a total of 777 foreign-made wrist watches and 879 wrist watch straps were found, with an estimated value of Rs.2,22,190/-. A seizure *panchnama* was prepared on 1<sup>st</sup> May 1985, and the goods were confiscated under the provisions of the Customs Act, 1962, on the reasonable belief that they had been illegally imported into India. Further investigation revealed

that the seized goods had been smuggled into India during the first week of February, 1985 aboard the ship Safina-Tul-Firdaus H.M.V. 643. Accused Nos. 1 and 2 were identified as the owners of the ship, while accused No. 3 was its captain. Other accused persons were alleged to have actively participated in concealing, storing, transporting, selling, or facilitating the disposal of the smuggled goods. Some of the accused were found to have kept the smuggled watches in their custody, while others sold portions of the goods or retained sale proceeds. Cash amounts derived from such illegal sales were also seized from some of the accused persons.

**5.** The prosecution alleged that all accused knowingly dealt with smuggled foreign goods, despite being aware that such goods were liable to confiscation under law. They intentionally concealed, transported, sold, or otherwise handled the smuggled watches, thereby committing the offence punishable under Section 135 of the Customs Act, 1962. After obtaining sanction from the Collector of Customs, Ahmedabad, a criminal complaint was filed on 19<sup>th</sup> January, 1987 against 21 accused persons for the above offence. The trial Court took cognizance and

framed charges against the accused persons for offence punishable under Section 135 (1)(b)(i) of the Customs Act, 1962. They denied the charges and were tried.

**6.** Accused Nos. 4, 8, 18 and 20 were not available to be tried and hence their trial was separated.

**7.** Accused Nos. 9, 12, 13, 15, 16, 17, 19 and A21 were acquitted, whereas, accused Nos. 1, 2, 3, 5, 6, 7 and 11 were convicted and held guilty by the learned Chief Judicial Magistrate, Bhuj-Kachchh<sup>2</sup> *vide* judgment dated 26<sup>th</sup> March, 2003 passed in Criminal Case No. 566 of 87. Each convicted accused was sentenced to three years rigorous imprisonment along with fine of Rs.2,000/- each, with default stipulation of eight months rigorous imprisonment. The period spent by the accused in custody was ordered to be set off.

**8.** The convicted accused preferred separate appeals being Criminal Appeal Nos. 22, 23, 24, 25, 27, 28 and 29 of 2003 against the judgment of trial Court which came to be dismissed by the Additional Sessions Judge, Bhuj<sup>3</sup> *vide* judgment dated 21<sup>st</sup> May,

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<sup>2</sup> Hereinafter being referred to as “trial Court”.

<sup>3</sup> Hereinafter being referred to as “appellate Court”.

2005, affirming the judgment and order of sentence dated 26<sup>th</sup> March, 2003 passed by the trial Court.

**9.** The appellants preferred separate revisions<sup>4</sup> against the dismissal of their criminal appeals which have been rejected by the High Court *vide* common judgment dated 21<sup>st</sup> December, 2010, which is the subject matter of challenge in these appeals by special leave.

**Submissions: -**

**10.** Mr. Ravi Panwar, learned counsel representing the appellant-Amad Noormamad Bakali (accused No. 2) in Criminal Appeal No. 1000 of 2012, was not present at the time when the matter was taken up for final hearing. Subsequent to the hearing being concluded and the judgment having been reserved, learned counsel moved an application seeking permission to place written submissions on record. This Court, while granting permission to file written submissions, also directed the learned counsel to furnish relevant information to ascertain the status of the appellant-Amad Noormamad Bakali being alive or not. However, upon perusal of the written

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<sup>4</sup> Referred to in para 3.

submissions so tendered, it is observed that the same predominantly contain arguments on merits assailing the conviction of the appellant, and no information regarding the appellant-Amad Noormamad Bakali being alive or not is provided.

**11.** The sum and substance of the contentions advanced by Mr. Panwar is that the conviction of the appellant-Amad Noormamad Bakali is based solely on the confessional statement of Hussein Mamad Bhadala recorded under Section 108 of the Customs Act, 1962, and in the absence of any independent, substantive, or corroborative evidence on record establishing the appellant's involvement in the alleged offence, such sole reliance on the said statement is legally unsustainable and insufficient to sustain the conviction.

**12.** Shri Amar Dave, learned senior counsel appearing for the appellants in Criminal Appeal Nos. 1232-1237 of 2012 submitted that during pendency of the appeals, Aamad Alimamad Paleja (accused No. 1) and Ismail Alimamad Paleja (accused No. 3) have passed away.

**13.** Shri Dave urged that the case of the Customs Department is based on the recovery dated 30<sup>th</sup> April,

1985 wherein, 777 wrist watches and 879 watch straps of foreign origin recovered from two gunny bags lying in an abandoned and unclaimed condition in a pit on a newly laid road opposite to Government Guest House, Mandvi.

**14.** He urged that the involvement of the appellants in this case is based primarily on the confessional statements of one Hussein Mamad Bhadala recorded under Section 108 of the Customs Act, 1962. It was submitted that Hussein Mamad Bhadala, who had been summoned for inquiry by the Customs authorities, was subjected to severe custodial torture during the course of investigation and subsequently succumbed to the injuries inflicted upon him. In this regard, an FIR was registered against the concerned Customs officials for offences punishable under Sections 330, 302, 323, and 34 of the Indian Penal Code, 1860.

**15.** Shri Dave urged that all the appellants before this Court have already remained in custody for a considerable period nearing one year during the pendency of the trial, appeal, and revision before the High Court, and were subsequently enlarged on bail by this Court *vide* order dated 17<sup>th</sup> February, 2011.

**16.** He urged that though Section 135(1)(b)(i) of the Customs Act, 1962 as it then stood, carried a maximum punishment of five years, however, at the same time, the proviso to the aforesaid provision gives discretion to the Court to award minimum six months imprisonment for reasons to be recorded. Section 135 of the Customs Act, 1962 (as it then stood) is extracted hereinbelow:-

**“135. Evasion of duty or prohibitions-** 1) Without prejudice to any action that may be taken under this Act, if any person-

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

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

(i) in case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with

imprisonment for a term which may extend to five years and with fine:

Provided that in absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than six months;

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

**17.** He thus, urged that the appellants who are now of advanced age, deserve the indulgence of reduction of sentence to the term already undergone by them.

**18.** *Per contra*, Shri Raja Thakare, learned Additional Solicitor General appearing for the respondents opposed the submissions advanced by the appellants’ counsel. He urged that looking to the huge smuggling operation in which the appellants were found indulged, they do not deserve any leniency on the aspect of sentence.

**Findings and Conclusion: -**

**19.** We have given our thoughtful consideration to the submissions advanced at the bar and have perused the material placed on record.

**20.** At the outset, it would be apposite to note that the contention that the conviction of the appellants could not be founded solely upon the statements recorded under Section 108 of the Customs Act, 1962, was also urged before the High Court in revision. The High Court, upon a detailed examination of the statutory framework and the judicial precedents governing the admissibility and evidentiary value of such statements, rejected the said contention. It was observed that statements recorded under Section 108 of the Customs Act, 1962 by duly authorized Customs Officers are admissible in evidence and do not attract the bar contained in Sections 24, 30, or 34 of the Indian Evidence Act, 1872, provided they are made voluntarily.

**21.** Placing reliance on judgment of this Court in ***K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin***<sup>5</sup>, the High Court held that the object of Section 108 of the Customs Act, 1962 is to empower Customs authorities to collect relevant information and evidence relating to contraventions of the Act, and that such statements,

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<sup>5</sup> (1997) 3 SCC 721

if found to be voluntary, are substantive pieces of evidence capable of being relied upon in support of the prosecution case.

**22.** The High Court further noted that the appellants had failed to establish any material to demonstrate that the statements under Section 108 of the Customs Act, 1962 were obtained under coercion, inducement, or threat, and in the absence of such proof, the statements could not be discarded. The High Court negated the contention that the conviction was based solely on the statements recorded under Section 108, observing that such statements had led to further discovery of incriminating material, including contraband articles and money, duly documented through *panchnamas* and corroborated by the testimony of Customs Officers. It was held that such discoveries and recoveries constituted independent and relevant evidence within the meaning of Sections 6, 10, and 11 of the Evidence Act, thereby lending corroborative support to the statements made under Section 108. Consequently, it was held that the conviction of appellants was not based merely on confessional statements but in addition thereto, the prosecution

provided tangible corroborative evidence. Therefore, the judgment of conviction did not suffer from perversity or legal infirmity.

**23.** Having considered the matter in its entirety, we find ourselves in agreement with the observations made by the High Court. The findings of guilt recorded by the trial Court, which stand concurrently affirmed by the appellate Court as well as the High Court do not suffer from any perversity, illegality, or manifest error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India.

**24.** Thus, the only question which remains for consideration at this stage pertains to the quantum of the sentence imposed, particularly in light of the surrounding circumstances, the custodial period already undergone by the appellants, and the significant lapse of time since the date of the recovery.

**25.** In this regard, it is significant to note that Shri Thakare, learned A.S.G. appearing for respondents was not in a position to dispute the fact that the recovery relates to the year 1985, and that the offending consignment of watches was recovered

lying in an abandoned condition. The conviction of the appellants seems to be primarily based on confessional statements recorded under Section 108 of the Customs Act, 1962. Conscious possession of the smuggled goods is not attributed to the appellants.

**26.** It is further not in dispute that several co-accused persons were acquitted by the trial Court. Some of the appellants before us are reported to have passed away during the pendency of the present appeals. The surviving appellants are now of advanced age and have undergone a substantial period of incarceration, reportedly around one year, which is more than the statutory minimum sentence of six months contemplated under the proviso to Section 135 (1)(b)(i) of the Customs Act, 1962 as it then existed.

**27.** In this backdrop, considering the totality of circumstances, including the fact that the incident is nearly four decades old, the period of incarceration already undergone by the appellants, the prolonged pendency of proceedings, and the advanced age of the surviving appellants, we are of the considered view that directing the appellants to undergo any further

incarceration at this point of time would be unduly harsh and would not subserve the ends of justice. In the peculiar facts and circumstances of the present case, ends of justice would be served by reducing the sentence to the term already undergone by the appellants.

**28.** Accordingly, while affirming the judgment of conviction dated 26<sup>th</sup> March, 2003 passed by the trial Court, we deem it appropriate to reduce the sentence awarded to the appellants to the period already undergone by them.

**29.** Since, the appellants are on bail, they need not surrender. Their bail bonds stand discharged.

**30.** The appeals are partly allowed in aforesaid terms.

**31.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(VIKRAM NATH)**

.....**J.**  
**(SANDEEP MEHTA)**

**NEW DELHI;**  
**FEBRUARY 23, 2026.**