

(1978) 09 CAL CK 0019**Calcutta High Court****Case No:** Criminal Revision No. 2268 of 1977

Sashikant T. Mehta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 11, 1978**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Customs Act, 1962 - Section 135, 140, 140(2)
- Essential Commodities Act, 1955 - Section 10
- Gold (Control) Act, 1968 - Section 85, 93(2)

Citation: (1979) CENCUS 117 : (1979) 4 ELT 5**Hon'ble Judges:** B.N. Maitra, J**Bench:** Single Bench**Judgement**

B.N. Maitra, J.

It has been stated that on the 7th February, 1975 at about 2-15 P.M. a batch of Customs Officers searched the shop room of M/s. Thakorlal Hiralal and Co. at premises No. 9, B.B.D. Bag (East) Calcutta. Pursuant to that search some contraband primary gold and diamonds, for which proper account was not found to have maintained and whose possession could not be satisfactorily explained, were seized. The same were reasonably believed to be smuggled goods. The accused nos. 1 and 2 are the employees of the firm and the accused nos. 3 and 5 are its partners. On the footing of that complaint the petitioner was proceeded against u/s 85 of the Gold Control Act and u/s 135 of the Customs Act. Against the issue of process the present Rule was obtained by the petitioner, who is said to be one of the partners of that firm.

2. It has been contended on behalf of the petitioner that in the petition of complaint no necessary averment has been made so as to attract the provisions of section 140 of the Customs Act and section 85 of the Gold Control Act. The partners have been

sought to be vicariously liable. Simply because the firm is said to be in possession of such gold and diamonds, the petitioner or partners have no vicarious liability. In this matter the company has not been made an accused. Hence for the alleged possession by the company, the petitioner cannot be vicariously made liable. There is no independent allegation against the petitioner and the partners. The case of [State of Madras Vs. C.V. Parekh and Another](#), has been cited to show that the Manager and Director of a company cannot be convicted by applying section 10 of the Essential Commodities Act, because liability of the persons in charge can arise under that section only when contravention is by the company itself. It has thus been contended that the Rule should be made absolute.

3. The learned advocate appearing on behalf of the complainant opposite party has stated that the present prayer is premature. The court can take evidence and on the basis of the evidence adduced, frame charges against the alleged offenders. Necessary averment has been made against all the accused in paragraphs 9, 10 and other paragraphs of the petition of complaint. In paragraph 24 of the petition of complaint it has been stated that Messrs. Thakorlal Hiralal and Co., and its partners, that is, accused nos. 2, 3 and 5, by their act and omission are guilty and the accused nos. 1 and 2 aided and abetted the accused nos. 3 to 5 in their omissions and commissions and so all of them are liable to be penalised. The facts of the State of Madras case are different. Reference may be made to the decision of [Amar Nath and Others Vs. State of Haryana and Another](#), to show that Mr. Justice Fazal Ali has stated that when a matter has touched important rights or liabilities of a party, it is not an interlocutory order. An order to summon a person as accused is not an interlocutory order and so in a fit case the provisions of section 482 of the Code of Criminal Procedure can be applied.

4. Section 93(2) of the Gold Control Act and section 140(2) of the Customs Act deal with the offence committed by Director, Manager and other persons. But necessary averment in this respect has to be made in the petition of complaint. Here the main allegation is against the firm M/s. Thakorlal Hiralal and Co., which has not been made a party to the petition of complaint. From a reading of the entire petition of complaint it appears that necessary averments have been made only against that firm and also against the accused nos. 1 and 2. Of course, in the paragraph 24 of the petition of complaint some averments have been made against the accused nos. 3 to 5. But those allegations are absolutely vague. There is no independent allegation against those three persons that they were in charge of the affairs of that firm or they were in possession of such gold, diamonds etc. In the absence of such allegation in the petition of complaint it must be held that the ingredients of the offence u/s 135 of the Customs Act and section 85 of the Gold Control Act are wanting so far as the accused nos. 3 to 5 are concerned and of those three accused, the petitioner is one. Hence the Rule will be made absolute only regarding those three accused.

5. The Rule is made absolute. The proceeding in question is quashed so far as the accused nos. 3 to 5, viz., Ramesh T. Mehta, Jayanti Bhai Mehta and Sashi Kant T. Mehta are concerned. The proceeding will continue against accused nos. 1 and 2.