MOHD. AKHTAR HUSSAIN ALIAS
IBRAHIM AHMED BHATTI

v.

ASSISTANT COLLECTOR OF CUSTOMS (PREVENTION)
AHMEDABAD & ORS.

AUGUST 31, 1988

[G.L. OZA AND K. JAGANNATHA SHETTY, JJ.]

Criminal Procedure Code, 1973, Section 427—Sentence—Concurrent or consecutive—Principles to be followed.

The appellant was charged under section 85(1)(ii) of the Gold (Control) Act, 1968 pursuant to seizure of 7,000 tolas of foreign mark gold from his possession. He pleaded guilty to the charge and was convicted and sentenced to the maximum punishment of imprisonment for 7 years and fine of Rs.10 lakhs prescribed under the Act. On appeal, the High Court confirmed that sentence but reduced the fine to Rs.5 lakhs. The Supreme Court confirmed the sentence in a special leave petition filed by the appellant. While the appellant was under judicial custody, he was again prosecuted alongwith 18 others under section 135 of the Customs Act for smuggling of gold and export of silver out of India. The appellant pleaded guilty to the charge and was convicted and sentenced for 4 years R.I. with fine of Rs.2 lakhs by trial court. Both the sentences were ordered to run consecutively. On appeal, the High Court enhanced the sentence from 4 years to the maximum prescribed punishment of 7 years on the ground that the enormity of the crime committed by the appellant warranted nothing else than the maximum sentence.

Allowing the appeal by the appellant on the question of sentence,

HELD: 1. Section 427, Cr. P.C. relates to administration of criminal justice and provides procedure for sentencing. The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different. [751C, D-E]

A **2(i) The enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be**
B **consecutive. The totality principle has been accepted as correct principle for guidance. [753E-F]**

R. **v.** *Edward Charles French,* **[1982] Cr. App. R. (S) p. 1 at 6, referred to.**

C **In the instant case, the trial court has properly considered all aspects including the plea of guilty and given good reasons for awarding 4 years R.I. That means in all, the appellant has to undergo 11 years of imprisonment. That by itself is quite long enough in a man's life. But the High Court took a narrow view of the whole matter with the enormity of the crime on the forefront. [753G-H]**

D

2(ii) The broad expanse of discretion left by legislation to sentencing courts should not be narrowed only to the seriousness of the offence. No single consideration can definitively determine the proper sentence. In arriving at an appropriate sentence, the court must consider, and some times reject, many factors. The court must 'recognise, learn to
E **control and exclude' many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the court cannot afford to be blind to imprisonment which the accused is already undergoing. [753H; 754A-B]**

3. Generally, it is both proper and customery for courts to give
F **credit to an accused for pleading guilty to the charge. But no credit need be given if the plea of guilty in the circumstance is inevitable or the accused has no alternative but to plead guilty. The accused being caught red handed is one such instance. [753B]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
G No. 467 of 1988.

From the Judgment and Order dated 20th July, 1987 of the Gujarat High Court in Crl. Appeal No. 260/87 with Crl. Appeal No. 105/87 and Crl. Appeal No. 444/87.

H Soli J. Sorabji, Mukul Mudgal, E.K. Jose and P.H. Parekh for the Appellant.

G.A. Shah, M.N. Shroff, B. Datta, A.K. Srivastava, P. Prameshwaran and Mrs. Sushma Suri for the Respondents. A

The Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. We grant Special leave and proceed to dispose of the appeal. B

The appeal arises from a Judgment of the Gujarat High Court dated 20th July 1987 in Criminal Appeal Nos. 260/1987, 105/1987 and 444/1987. It raises a short but not very easy point for determination. The point relates to sentencing practice as to concurrent or consecutive sentences. C

The essential facts can be stated in summary form as follows:

Appellant—Mohd. Akhtar Hussain alias Ibrahim Ahmad Bhatti is a Pakistani national. On 15 April 1982, the gold 7000 tolas of foreign mark of the value of Rs.1.4 crores was seized from his possession at D Ahmedabad. Later he was arrested. On 23 September, a case was filed in the Court of Chief Metropolitan Magistrate, Ahmedabad in CC No. 1674 of 1982. He was charged under s. 85(1)(ii) of the Gold (Control) Act, 1968. He pleaded guilty to the charge. On 11 January, 1984 he was convicted and sentenced to imprisonment for 7 years and fine of Rs.10 lakhs. It is the maximum punishment prescribed under the Gold E (Control) Act. Upon appeal, the Bombay High Court confirmed that sentence but reduced the fine to Rs.5 lakhs. The special leave petition filed by the appellant was dismissed by this Court. That conviction and sentence became final.

When the appellant was under judicial custody in the aforesaid F case, there was further investigation with regard to his smuggling activities. It revealed widespread racket of smuggling gold and silver in collusion with several persons. On 6 January, 1983 he was again prosecuted along with 18 others under s. 135 of the Customs Act, 1962. The complaint in this case was filed before the Additional Chief Metropolitan Magistrate, Ahmedabad. It was registered as CC No. G 129/1986. It was alleged in the complaint that the appellant and others had imported gold worth Rs.12.5 crores and smuggled out of India silver worth Rs.11.5 crores during December 1981 to February 1982. In this case also the appellant did not wait for the trial of the case. He pleaded guilty to the charge. The other 18 accused, however, did not follow him. They denied the charge and the case against them is said to H be still pending for disposal.

A On 6 January, 1987, the trial Magistrate convicted the appellant, in the following terms:

> "Accused No. 1 in this case is proved guilty under Section 135 of Customs Act and it is ordered that accused No. 1 is sentenced for 4 years (for four years R.I. and a fine
B of Rupees two lakhs (Rupees two lakhs only) and if fine not paid, further sentence of R.I. for six months more. This sentence is to be undergone on expiration of sentence in Crl. case No. 1674/82. Accusd is found guilty under section 120(B) of Indian Penal Code, but no separate sentence is ordered, for the same."

C The reasons given in support of the above conclusion are:

> "It is not proper to pass order only by taking the circumstances and difficulties of the accused. Simultaneously, midway should be found looking to the circumstances
D of the nation and personal circumstances of the accused. It is not possible to order sentence of both the cases of the accused, to run concurrently. When the accused in previous case, was ordered to undergo sentence of seven years R.I. then, in this case it dos not seem reasonable to order sentence for similar period i.e. detain in jail for 12 to 14
E years and fine and if fine not paid, to undergo further more sentence. The accused had pleaded guilty and requested for mercy. It is in the interest of justice to show slight mercy in the order of sentence by the Court."

Against this order of conviction and sentence there were appeals
F and counter appeals before the High Court. The appellant appealed against the sentence on the ground that the sentences should have been made concurrent. The State, on the other hand, demanded the maximum sentence again. The maximum sentence prescribed under s. 135 of the Customs Act is also 7 years. The State contended that in view of the enormity of the economic crime committed by the appel-
G lant, he should be given the maximum and consecutive. The High Court accepted the State appeal, enhanced the sentence from 4 years to 7 years and made it consecutive. Consequently, the High Court dismissed the appeal of the appellant. The result is that he has to serve in all 14 years imprisonment which he has challenged in this appeal.

H Section 427 Cr.P.C. incorporates the principles of sentencing an

offender who is already undergoing a sentence of imprisonment. The relevant portion of the Section reads:

> "427.(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.
>
> XXXXX XXXXX XXXXX"

The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

The basic rule of thumb over the years has been the so called single transation rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under the two enactments in respect of seizure of 7,000 tolas of gold. On this basis, reference is also made to Section 428 Cr. P.C. claiming set off in regard to the period of imprisonment already undergone by the appellant.

The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act

A relates to possession of 7,000 tolas of primary gold prohibited under s. 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of Gold Worth Rs. 12.5 crores and export of silver worth Rs. 11.5 crores. On these facts, the Courts are not unjustified in directing that the sentences could be consecutive and not concurrent.

B The question, however, remains to be considered is whether the maximum sentence under the Customs Act is warranted? Whether, in the circumstances, it is wrong in principle to sentence the same offender the another maximum imprisonment?

It is argued that the High Court has failed to take into consideration the total period of sentence which the appellant has to undergo. It C is also argued that since the conviction was based on the plea of guilty the appellant should have been given a credit in the sentence. The personal problems of appellant are also highlighted for reduction in the sentence.

D The High Court has refused to take into consideration the merciful plea of the appellant and much less the plea of guilty. The enormity of the crime committed by the appellant, according to the High Court, warranted nothing less than the maximum sentence. The High Court had this to say:

E "The individual hardships of the appellant and his family would be of no consequence at all. If offence was such that the maximum sentence should have been awarded, then the learned Metropolitan Magistrate should not have made an illconceived attempt to find out a *via media.* We, therefore, feel that the appeal filed by the State F requires to be allowed. The fact that the accused had pleaded guilty is of no consequence. It is not the case of plea-bargaining because the accused had pleaded guilty and yet he was given numerous opportunities to reconsider his decision. If the accused even thereafter had pleaded guilty, the fact that he was awarded a seven years' Rigorous G imprisonment sentence in the previous case would be no ground for the learned Metropolitan Magistrate to award less than the maximum sentence if the facts of the case warranted such a maximum sentence. The enormity of the crime called for nothing less than the maximum sentence."

H We have carefully perused the entire material on record. It may

be recalled that the appellant was given the maximum sentence of 7 years in the previous case under Gold (Control) Act. The conviction thereunder was also based on the plea of guilty. The latter sentence under the Customs Act was also on the plea of guilty. Generally, it is both proper and customery for Courts to give credit to an accused for pleading guilty to the charge. But no credit need be given if the plea of guilty in the circumstance is inevitable or the accused has no alternative but to plead guilty. The accused being caught red handed is one such instance. The first case under the Gold (Control) Act against the appellant falls into the latter category. 7,000 tolas of Gold of foreign mark of the value of Rs.1.4 crores were seized from the possession of appellant. The plea of guilty in that case was inevitable. The Court was, therefore, justified in awarding the maximum sentence. But the second case under the Customs Act was not of that type. Here the prosecution has to prove many things. There are 18 other accused facing the trial in the same case. The appellant, however, pleaded guilty perhaps on legal advise. He must have been told that some credit for such plea would be given by the court and if the credit is not given and the maximum sentence is awarded the appellant is surely entitled to complain for giving the maximum sentence.

It is no doubt that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance. In *R.* v. *Edward Charles French*, [1982] Cr. App. R. (S) p. 1 (at 6), Lord Lane, C.J., observed:

> "We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing judge should try to ensure that the totality of the sentences is correct in the light of all the circumstances of the case."

The trial Magistrate in this case has properly considered all aspects including the plea of guilty and given good reasons for awarding 4 years R.I. That means in all, the appellant has to undergo 11 years of imprisonment. That by itself is quite long enough in a man's life. But the High Court took a narrow view of the whole matter with the enormity of the crime on the forefront. The broad expanse of

A discretion left by legislation to sentencing Courts should not be narrowed only to the seriousness of the offence. No single consideration can definitively determine the proper sentence. In arriving at an appropriate sentence, the court must consider, and some times reject, many factors. The court must 'recognise, learn to control and exlcude' many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the Court cannot afford to be blind to imprisonment which the accused is already undergoing.

In the result, we allow the appeal, set aside the judgment of the High Court and restore that of the trial court.

C

M.L.A. Appeal allowed.