

Badri Prosad Agarwalla Vs. the King

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Court : Guwahati

Decided On : Feb-28-1949

Judge : Lodge, C.J. and Thadani, J.

Appellant : Badri Prosad Agarwalla

Respondent : The King

Judgement :

1. This rule was issued upon the Deputy Commissioner, Nowgong, to show cause why the convictions and sentences imposed on the petitioner should not be set aside. The ease for the Crown was that the petitioner was travelling on the train from Pandu through Gauhati on 14th October 1947. His conduct aroused suspicion and he and his luggage were searched. In the trunks belonging to him was found 37 seers of opium. Evidence was adduced by the prosecution in support of these allegations and the learned Magistrate, believing the evidence, found the petitioner guilty Under Section 9 (a) of Act I [1] of 1878 and sentenced him under that section to undergo rigorous imprisonment for two years, and to pay a fine of Ea, 1,000 in default, to suffer rigorous imprisonment for a further period of one year. The learned Magistrate also found the petitioner guilty Under Section 9 (c) of the said Act on the same facts, and sentenced him under that section to undergo rigorous - imprisonment for two years and to pay a fine of ESection 1,000 and in default of payment of fine, to suffer rigorous imprisonment for a further period of one year. The learned Magistrate further directed that the sentences should run consecutively.

2. The petitioner appealed. The learned Sessions Judge, after hearing the learned advocate for the appellant, called for the record of the case, but did not say that the appeal would be heard, and did not pass any orders admitting the appeal. After perusing the record, the learned Sessions Judge directed that the appeal be dismissed summarily. It is against that order that the present rule has been obtained.

3. Mr. Sen for the petitioner has pointed out that separate convictions Under Section 9 (a) and Section 9 (c) of the said Act for the same offence were not justified.

4. If the petitioner imported the opium, he did so by carrying it himself, and his possession was the method of importing it. In our opinion, the learned Magistrate was not justified in convicting him for two separate offences for the same act, and in imposing two separate sentences therefor. In fact, on the evidence, it is impossible to say that there was any evidence of an offence of importing. The evidence against the accused was merely that he was in possession of the opium and that he had a ticket from Pandu a station in Assam. The evidence proved possession of opium, but did not prove importation of opium. Mr. Sen contended further that the learned Sessions Judge, in view of the nature of the evidence, ought to have heard the appeal properly and to have delivered a judgment after hearing the appeal. Mr. Sen has indicated to us the nature of the evidence in this particular case and we are of opinion that the learned Judge exercised a proper discretion in dealing with appeal summarily.

5. We are unable to hold that the evidence was of such a nature that the learned Judge ought to have heard the appeal in full. We, therefore, order that the rule be made absolute to this extent only, viz.: conviction and sentence Under Section 9 (a), is upheld but the conviction and sentence Under Section 9 (c) of the Act is set aside and the appellant is acquitted of the charge of importation.