

In Re: Kadambala Narasimhulu

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Court : Andhra Pradesh

Decided On : Nov-05-1962

Reported in : 1964CriLJ366

Judge : Munikanniah, J.

Appellant : In Re: Kadambala Narasimhulu

Judgement :

ORDER

Munikanniah, J.

1. The petitioner was found in possession of six slabs weighing about 60 tolas of opium on 13-5-1961. He is prosecuted by the Excise and Prohibition Sub-Inspector, Sompeta, in the Court of the Additional District Munsif Magistrate, Sompeta, for an offence Under Section (a) of the Opium Act, I of 1878. P. W. 3, the Analyst, spoke that the substance so seized was opium with morphine, but as he did not conduct the quantitative analysis, he was unable to specify the percentage of morphine in the opium seized. The accused raised the defence that unless the prosecution proves that the opium contained 0.2 per cent or more of morphine, he cannot be found guilty under the Opium Act. In view of this the Munsif-Magistrate passed an order on the memo filed by the Sub-Inspector of Excise and Prohibition (complainant) that the opium should be sent again to the Chemical Examiner for further analysis with a view to find the exact percentage of

morphine in each item of opium slab. This order was purported to be made Under Section 540, Cri. P. C. Against this order the accused preferred this revision petition on 1-3-1962.

2. It may be mentioned that though His trial of the case, C. C. No. 49 of 1961, has been stayed by this Court, the second report of the Chemical Examiner dated 2-4-1962 was received by the lower Court. That report specified that all the six slabs of opium contain more than 2% of morphine.

3. Mr. Satyanarayana for the accused contended before me that the order of the lower Court calling for a second report from the Analyst in respect of morphine content of the opium is illegal, as Section 540, Cri. P. C. does not empower this Court to remit the report of the Analyst for reconsideration or call for a fresh report when the first report is found to be defective or lacking in details. This argument is put forward basing it upon the language of Section 540 which reads:

Any Court may, at any stage of any enquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Essentially the power that is given to the Court under this Section is to summon a witness or examine a person who is present though not summoned as a witness, or re-call or re-examine any person already examined if that becomes necessary for the just decision of the case. This Section does not empower the Court to remit a report to an Analyst for re-consideration or to call for a fresh report. It may also be pointed out that the mere re-calling of the Analyst or his re-examination in the instant case without the report of further analysis of the opium to find its exact morphine content would serve no purpose and will be altogether ineffective. Therefore the Court had to direct the analyst to furnish a fresh report after again finding the exact morphine content of the opium. While so, I am of the view that such a thing cannot be directed under the provisions of Section 540, Cri. P. C. Therefore, I hold accepting the contention of the counsel that the order of the lower Court is wrong while it purports to act Under Section 540.

4. But the other aspect of the matter is whether this Court, when the matter comes before it, cannot act under its inherent powers and direct the Analyst to make the necessary analysis and submit the report. I should consider that when such a procedure is necessary for the just decision of the case, this Court cannot but give such a direction. In this view, I am prepared to hold that a second report by the Analyst is necessary and the report already furnished by the Analyst in this case: could be taken on file as in obedience to a direction by this Court to that effect.

5. In this view, this matter will go back to the lower Court. The Court of the Additional District Munsif-Magistrate, Sompeta, will hear the case from the stage at which, it was stayed and determine it after giving opportunity to the accused to cross-examine the Analyst with reference to his second report.

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