

State Vs. Mangala

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Court : Allahabad

Decided On : Apr-03-1957

Reported in : AIR1957All753; 1957CriLJ1199

Judge : Roy and ;Sahai, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 255, 271 and 412; Uttar Pradesh Opium Smoking Act, 1934 - Sections 14; [Constitution of India](#) - Article 19(1) and 19(3); [Opium Act, 1878](#) - Sections 9 and 14

Appeal No. : Criminal Appeal No. 1522 of 1954

Appellant : State

Respondent : Mangala

Advocate for Def. : Simrikh Muni Viswa Mitra, Adv.

Advocate for Pet/Ap. : Government Adv.

Disposition : Appeal allowed

Judgement :

Roy, J.

1. This is an appeal by the State against an appellate order of acquittal passed by the learned Second Additional Sessions Judge of Agra by which Mangala, the

respondent, had been acquitted of the charge under Section 14 of the U. P. Opium Smoking Act No. III of 1934. The respondent Mangala was prosecuted with two others, namely Sharafat Husain and Bundu of offences punishable under Section 12 and 14 of the Act. The learned Magistrate upon the plea of guilty made by the accused persons and upon the statement made by them before him convicted Bundu under Section 14 of the Act and sentenced him to six months' R. I. and also under Section 12 of the Act to two months' R. I.

He acquitted Mangala and Sharafat under Section 12 of the Act but convicted them under Section 14 and sentenced each of them to a fine of rupees one hundred, in default of which to undergo one month's R. I. Mangala, the respondent, appealed against his conviction and sentence. The learned Second Additional Sessions Judge, by his judgment and order dated the 12th of April, 1954, came to the conclusion that the statement of Mangala cannot be construed as an admission of guilt under Section 14 of the Opium Smoking Act and there was no plea or 'guilty' to the charge, and that the Magistrate was wrong in quoting the sections of the Act because according to the learned Second Additional Sessions Judge Section 14 of the Opium Smoking Act does not provide for penalty for contravention of the Act but lays down the rule for search and seizure. Section 9 of the Act will appear to provide for penalty. Upon all that view of the matter the appeal was allowed and the conviction and sentence set aside.

2. We have gone through the record along with the learned counsel for the parties and we are of the opinion that the learned Second Additional Sessions Judge has not only misquoted the statement of the accused and the sections of the Act but he refused to look into the charge and to the note made by the Magistrate on the charge itself when it was read out to the respondent and to which the respondent had pleaded 'guilty'.

Section 412 of the Code of Criminal Procedure provides that notwithstanding anything contained in the other sections of the Code where an accused person has pleaded guilty and has been convicted by a Magistrate of the first class on such a plea, there shall be no appeal except to the extent or legality of the sentence. The jurisdiction of the Sessions Judge when the appeal was laid before

him and had been heard by him extended, in view of Section 412 of the Code, to the question of the extent or the legality of the sentence and not to the question of the conviction.

3. Apart from that aspect of the matter we have looked into the statement of Mangala and the charge that was framed against him and we find that the criticism by the judge was not justified. The statement was to the following effect:

'Question--Did you on the 15th of March, 1953 at 8 p.m., in the company of Bundu and Sharafat Husain assemble at the house of Bundu with a view to smoke opium, and were implements for the preparation of smoking of opium found at that, place?

'Answer--Yes. Such implements were found there. I had assembled there along with the others for the purpose of smoking opium.'

4. The question and answer were clear enough. The question comprehended two matters: the first related to the respondent's being a member of the opium smoking assembly, and the second related to the matter of having been found in possession of implement of opium smoking. It was on the first matter that he was found guilty under Section 14 of the Opium Smoking Act and convicted and sentenced by the Magistrate for that offence. Section 14 of the Opium Smoking Act of 1934 provides that whoever is a member of an opium smoking assembly shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both. The conviction of the respondent under Section 14 of the Act upon the state rent made by him, which was absolutely clear, and upon the plea of guilty entered by him after the charge had been framed by the Magistrate was, therefore, perfectly justified.

5. It has been contended on behalf of the respondent that Section 14 of the Opium Smoking Act is ultra vires of the [Constitution of India](#) as it offends against Article 19(1)(b). Article 19(1)(b) of the Constitution states that citizen shall have the right to assemble peaceably and without arms. The submission which has been made by Mr. Simrikh Muni on behalf of the respondent is that since the respondent along with the two others had assembled there peaceably and without arms though for the purposes of opium smoking, there was no offence, and Section 14 of the

OpiumSmoking Act which makes it an offence for members of an opium smoking assembly to assemble together will be providing a provision which will be in the teeth Of Article 19(1)(b) of the Constitution.

Article 19(3) of the Constitution says that nothing in Sub-clause (b) of Article 19(1) of the Constitution shall effect the operation of any existing law in so far as it imposes in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause. We do not think that Mr. Simrikh Muni intends to mean that a restriction of the nature provided under Section 14 of the Opium Smoking Act is not a reasonable restriction on the exercise of the right of assembly provided by Article 19(1)(b). We are, therefore, definitely of opinion that Section 14 of the Opium Smoking Act does not offend against Article 19(1)(b) of the Constitution and it is not, therefore, ultra vires of the Constitution.

6. We have now to notice only one other matter in this case. It is that the learned Second Additional Sessions Judge, from the observations made in his judgment, appears to us to have not had the Opium Smoking Act No. III of 1934 before him and he had had before him the Opium Act No. I of 1878, when in the operative portion of his order he criticised the Magistrate for misquoting the section in his charge and order and when he observed that 'Section 14 of the Opium Smoking Act does not provide for penalty for contravention of the Act but lays down the rule for search and seizure' and that 'Section 9 of the Act will appear to provide for penalty'. When he referred to Section 9 and 14 and made these observations he had before him the provisions of the Opium Act of 1878 and not of the Opium Smoking Act of 1934. Section 14 of the Opium Smoking Act, 1934 does provide for penalty. It is Section 14 of the Opium Act of 1878 which provides for entry, arrest and seizure: and it is again Section 9 of the Opium Act of 1878 which provides for penalty for illegal cultivation of poppy etc. The Sessions Judge's criticism of the Magistrate was, therefore, unjustified.

7. In our opinion the order of acquittal passed by the learned Second Additional Sessions Judge was unjustified. Accordingly we allow the appeal, set aside the order of acquittal dated the 12th of April 1954 passed by the Second Additional Sessions Judge and convict Mangal respondent under Section 14 of the Opium

Smoking Act No. III of 1934 and sentence him to a fine of rupees one hundred, in default of payment of which he shall undergo one month's rigorous imprisonment.

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