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Court : Allahabad

Decided On : Nov-28-1923

Reported in : AIR1924All558; 81Ind.Cas.100

Judge : Walsh and ;Ryves, JJ.

Appellant : Gobind Ram

Respondent : Emperor

Judgement :

1. The facts found or admitted in this case are that one Ram Chander, which is alleged to be a pseudonym for Gobind Ram appellant, despatched from Kotah Native State 111 bags maize containing a large quantity of opium. The goods were addressed to the same name, Ram Chander the consignee at Cawnpore, and arrived at Cawnpore in the train by which Gobind Ram and his servant travelled. He went to a dharamsala, and being suspected of traffic in opium he was there arrested and searched, and he was taken to the Railway Station where the truck containing the bags of maize was, and in his presence the truck was emptied and the maize examined and opium was discovered. In his possession was the Railway, receipt addressed by Ram Chander in Kotah to Ram Chander in Cawnpore. There cannot be the slightest doubt that he is the Ram Chander indicated in the Railway receipt. His possession of the Railway receipt is almost conclusive on the subject, and no explanation has been tendered, except the absurd story that it was planted on him. On these facts it is quite clear that he was

rightly convicted of importing.

2. On the question of the meaning of the word 'importing,' we wish in the first place to draw attention to the fact that the case of Munshi Lal v. Emperor 66 Ind. Cas. 184 : 20 A.L.J. 198; (1922) A.I.R. (A.) 21 : 23 Cr. L.J. 248, which was a Single Judge judgment delivered by me, has been entirely misunderstood by the author of the head-note in the Law Journal, Relates to 20 A.L.J. [Ed.] and, therefore, apparently Ipy the learned Judge, who referred this case. The important passage in that judgment exactly fits this case :

3. 'I say nothing to discourage the view that a person who exports from outside the United Provinces to a warehouse inside the United Provinces of which he is really the proprietor or temporary possessor even under a false name, is, in fact, committing an offence under the Act of importing into the United Provinces, although he is also the person who exported from outside. It is perfectly possible for me to send an article for myself from the High Court at Allahabad to my Chambers in London, and if I did so with a dutiable article without declaration, I should be guilty of importing into England.' That exactly fits the case we have before us. I go on to point out in my judgment that the sentence under revision, which I quashed, was a contradiction in terms, and that you cannot import to a place unless you are the person taking delivery inside the area. That is not intended, nnd never could have been properly understood as being intended as a comprehensive definition of 'to import.' It is merely a definition of a part of the act of importing, indicating that it must be a person who was intending to take delivery, or had the right to take delivery, or desired to take delivery inside the area. To say, as the head-note said in the report, that 'to import goods to a place means taking delivery of them at the place,' is absurd and inconsistent with the whole tenor of my judgment and with the actual language, which I used. Mr. Justice Sulaiman, appears to have thought the same thing, because he points out that in this particular case the applicant in revision had not taken delivery, and he, therefore, thought that a debatable point of law arose and he referred it to two Judges. But as a matter of fact taking delivery is merely the final step andby no means the test, and was never intended by me, nor was it said by me to be the test of importation. We think, therefore, that in any event no point of law arises, and that the ambiguity

suggested by Mr. Justice Sulaiman is entirely due to an mistaken head note.

4. A previous application in revision has already been made by the applicant in this case. The judgment of the Chief Justice who allowed that application, which related to ah order of confiscation of the riotes found' in his possession; shows that the previous application for restoration of his notes was decided upon the basis that he was the owner of the opium, but that the money in his possession was' the purchase price of the sub-sale. As a matter of general discretion, in bur view, if a man makes an application to this Court -in revision with full knowledge of the facts and deliberately keeps back one point, he will not be heard to make a second. It may be that the law gives him technical right to apply, but granting the application is a master of discretion If by some bona fide mistake, for which he is not responsible, or by the bona fide mistake of some agent, if he happens to be in prison at the time, a real point is omitted, that may be an exception, but under ordinary circumstances this Court would reject an application on a second point. The application is dismissed.

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