

**Govind Ram Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Jun-28-1923

**Reported in :** 81Ind.Cas.103

**Judge :** Grimwood Mears, C.J.

**Appellant :** Govind Ram

**Respondent :** Emperor

**Judgement :**

Grimwood Mears, C.J.

1. Govind Ram applies in revision against the order of the Second Additional Sessions Judge of Cawnpore who had modified an order of the Magistrate of the First Class of Cawnpore. The appellant was convicted under Section 9 (e) of the Opium Act of 1878 as being a person who in contravention of the A.ct had imported opium into British India. He was sentenced to 12 months rigorous imprisonment and a fine of Rs. 1,000. His application does not, of course, relate in revision to either of these matters but it has reference to a sum of Rs. 9,000 which when produced before the Court were represented by notes cut into halves forming two bundles. One was in the possession of Govind Ram when he was arrested and the other halves were in the possession of one Kanhaiya Lal. Also there was found on Govind Ram a sum of Rs. 4,700 in whole notes. The Magistrate ordered the confiscation of the Rs. 4,700 and of the two halves of Rs.

9,000 notes representing a total value of Rs. 13,700. The Additional Sessions Judge of Cawnpore modified this order, declaring that there was no evidence by which the notes for Rs. 4,700 could be associated with the commission of any offence, but as regards the other sum of Rs. 9,000 comprised in the two bundles of half notes, he accepted the theory of the Crown that these notes represented the payment of imported opium. The question is, whether this money consisting of half notes of Rs. 9,000 was used in the commission of offence or not. The learned Judge says 'There is no direct evidence and it is suggested on behalf of the Crown that the inference is irresistible that the half notes were intended to be paid at Cawnpore to the person who has supplied opium while the other half of these notes had already been paid at Kotah. This argument appears to be plausible and I accept it.' We, must now see whether the inference is as irresistible as the Counsel for the Crown put it or whether there is an equally, plausible, defence. Indeed unless the Crown proves 'beyond all fair doubt that this money was part of the machinery employed for the purpose of importing the opium the case for the Crown fails. The matter is a curious one and the facts which are necessary for an understanding of the position are as follows. Beyond any question opium was being imported from the Native State of Kotah to Cawnpore in the very early days of January, probably the 1st, 2nd and 3rd, It was in fact running into Cawnpore on the morning of the 3rd January. Govind Ram lives at Kasganj and information was conveyed to an official that Govind Ram had taken to the smuggling of opium. The official, therefore, followed Govind Ram from Kasganj to Cawnpore travelling down with him in the train which arrived on the morning of the 3rd of January, Govind Ram and another man Jangi Rai made their way to a dharamsala and Sakhavat All Khan, the Excise Inspector went there also. After proper formalities Govind Ram was searched and so also was Jangi Rai and Rs. 4,700 were found on him in whole notes and also half notes which represented originally the value of Rs. 9,000. On him were also found a Railway receipt and a document of an extremely cryptic nature. The Railway receipt showed that a consignment of 'maize' contained in 111 bags was about to arrive at Cawnpore. They went to the station and the train having come in, some of these bags were examined and they did contain maize. They also contained in the centre of the maize, opium and the total amount of opium which was carried into Cawnpore on that morning and which was

covered by the Railway receipt amounted to no less than 13 1/2 maunds. Counsel for, the Crown have stated that the decision in this matter really turns essentially upon the meaning which can be extracted from the document written in Hindi which was found, at the time, of search on Jangi Rai. Jangi Rai, it may be remarked, is a servant of Govind Rai. I have had a translation made of this document and the translation has been agreed to be correct. The document is unsigned. In form it is a message from, one person to another. It is conceivable that it is the message of Govind Ram to, the exporter at Kotah announcing the arrival of the goods and announcing that the final payment will be made by sending the second batch of the half notes. On the other hand there is some ground for argument which I will develop later on that this letter may be that of a man who was a buyer from Govind Ram. If this is a letter from a buyer of Govind Ram then it seems that these documents are unconnected entirely with the offence of importing opium because what the persons were bargaining about was opium which had already been imported and has come into the physical possession of Govind Ram. The letter begins 'I am coming.' Now if that was the letter of Govind Ram as importer there seems no reason why Govind Ram should be about to undertake another journey to Kotah State, but if it was the letter of a man who knew that Govind Ram was importing stuff to Cawnpore he might, very well begin by saying 'I am coming'. The next phrase is 'I have received the goods'. That may, of course refer on the theory that the letter was that of Govind Ram, to an assertion that goods which had not then been received by him were known to be coming on the rail, and on the point of being-received. This letter was not intended to be despatched until after the goods came into his possession, but it may very well refer to some previous dealings which the writer of the letter had had with Govind Ram on another occasion. At all events that is, not an impossible interpretation. 'Have the goods ready for me'. That seems to relate to the first three lines of the message which says 'I am coming'. 'Have the goods-ready for me'. This is an entirely inappropriate expression for Govind Ram if he was the writer of the letter, to use because the goods were known by Govind Ram to be running to Cawnpore but it is exactly the expression a man, who, is dealing with Govind Ram as a buyer of imported opium, would use because he would want to have as little delay as possible in making away with the goods, 'Have the goods ready for me. I

shall arrive at the spot'. That again appears to me to be an expression which Govind Ram would not use in writing to his Kotah buyer because all that had been done. The goods had been made ready and there was no reason for Govind Ram to go anywhere. Then he writes certain figures which are unintelligible but the first figure coincides with the number of bags namely 111 and that no doubt is a direct reference to the consignment. Now up to the present as far as this letter goes it is a letter which has phrases completely inapplicable to the position of Govind Ram communicating with Kotah but entirely applicable to the position of a man communicating with Govind Ram at Cawnpore. Then there follow a series of figures which are wholly unintelligible. Then follow the days of the week and it may be that his reference 'I shall arrive at the spot' and the figures subsequent to 111 may be a code by which Govind Ram would know that he would arrive on Monday, Tuesday or Wednesday, or such and such a day, but at all events it is a letter of a man who is coming somewhere to get delivery of something. As far as Govind Ram was concerned he had already got the delivery that is to say the opium was nearing Cawnpore and there was no object in his saying 'I am coming' or requesting that someone should 'have the goods ready for me'. Now the letter continues 'I have sent money through the man.' 'I have sent half notes through the man'. That again is consistent with a buyer of this opium communicating with Govind Ram and saying 'I have already sent the first halves of the notes through the man, and will send the other halves by post.' Then there is some repetition 'I have sent the half notes through the man and will bring the other halves with me'. How could Govind Ram be saying that he would bring the other half notes with him 111 this Kotah transaction. How also would he be concluding this letter by saying. 'Allow the man to weigh and pack the goods' when he knew that those goods were already on rail and he held the Railway receipt. I have got to decide whether in my view the letter is one written by Govind Ram or written to Govind Ram and the considerations have pointed out do not appear to have been presented to the Additional Judge of Cawnpore. At all events I feel safe in saying this that on an analysis of that letter there is certainly no irresistible inference as was suggested to the Judge that this letter relates to the importation transaction. I do not think myself it does. I think it relates to a subsequent transaction. It may probably relate to the particular consignment of opium which was captured by the Excise

Inspector but that is not enough;

2. First of all, as regards confiscation the Act of 1878 provides that in any case in which an offence under Section 9 has been committed the poppy from which the opium is going to be prepared and the cultivated opium itself may be confiscated. It then has a general clause permitting confiscation of vessels, packages and coverings used in carrying the opium and declaring also that vehicles and animals shall likewise be liable to confiscation. It is not suggested that these rupee notes of the value of Rs. 9,000 can be attached under any section of the special Act but it is sought to bring them in under the general provisions of Section 517 of the Criminal Procedure Code. The essential of that section is that the property or document must be proved to have been used in the commission of the offence and this order of the Additional Sessions Judge of Cawnpore must be set aside unless the Crown make out that these documents formed part of the transaction of importing opium. I do not believe they do. I believe that there was some person who had an agreement with Govind Ram to take off his hands either a part or the whole of the 111 packages and the numerals which follow after the figure of 111 may be some fractional part of 111 as well as perhaps indicating the time and day upon which this purchaser would arrive. Believing as I do that this sum of Rs. 9,000 was money paid after the process of importing opium had come to an end I am of opinion that the Crown has no right to ask for the confiscation of these notes. The order, therefore, will be that as regards the halves of the notes of Rs. 9,000 which were found upon Govind Ram these must be returned to Govind Ram. The Court has apparently held for the time the other halves which were produced by Kanhaiya Lal. As regards the halves which were taken by the Court from Kanhaiya Lal he is not before the Court in any capacity but on his making an application to the lower Court for restoration the Court will consider on what grounds they profess to be holding them as against Kanhaiya; I am of opinion that in the circumstances Kanhaiya Lal is entitled to their return. The application in revision is, therefore, allowed.