

State of M.P. Vs. Gobarsingh

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Court : Madhya Pradesh

Decided On : Apr-03-1995

Reported in : 1996CriLJ302

Judge : J.G. Chitre, J.

Acts : [Opium Act, 1857](#) - Sections 9

Appeal No. : Cr. A. No. 78 of 1987

Appellant : State of M.P.

Respondent : Gobarsingh

Advocate for Def. : A.N. Pradhan, Adv.

Advocate for Pet/Ap. : G. Desai, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

J.G. Chitre, J.

1. This appeal has been preferred by the State for assailing order of acquittal passed by the learned Addl. Sessions Judge, Neemuch dtd. 10-11-86 by which he acquitted the respondent of charge levelled against him for offence punishable Under Section 9(a) of Opium Act.

2. The prosecution case was that one house situated in village Vishniya, Tahsil Neemuch, Distt. Mandsaur was raided on 16-10-81 at 2.30 p.m. The opium weighing about 100 kg. 300 gms. was found concealed under the floor in a pit which was covered by grass. After necessary investigation, the respondent was prosecuted in the Court of Addl. C.J.M. Neemuch who convicted him for offence punishable Under Section 9(a) of Opium Act and sentenced him to RI for 3 years and fine of Rs. 500/-; in default further RI for six months. The respondent had preferred an appeal in the Court of Sessions, Neemuch bearing No. Cr. A. 132/86. The learned A.S. Neemuch after examining the record allowed the said appeal and passed the order of acquittal in favour of the respondent and that is the subject matter of challenge in the present appeal preferred by the State.

3. The judgement of the learned A.S.J., Neemuch shows that he held that the charge levelled against the respondent was not proved because he was not found in conscious possession of the contraband article, exclusively. Learned C.A. Shri Desai, criticised the said approach and judgement of the A.S.J. Neemuch and submitted that the learned counsel should have held that the order of conviction and sentence passed against the respondent was proper and correct.

4. Shri A.N. Pradhan, learned counsel appearing for the respondent submitted that the way in which the said opium was concealed itself shows that respondent could not have the knowledge of that. He further submitted that there were four brothers residing in the said house and, therefore, the respondent could not have said to be in exclusive possession of the said room.

5. After hearing the arguments advanced on behalf of the appellant and respondent, and examining the judgement of the acquittal passed by the A.S.J. Neemuch, in view of the evidence on record, I come to the conclusion that the order of acquittal recorded by A.S.J. Neemuch in favour of the respondent is correct, proper and legal, for the reasons stated hereunder:

6. The prosecution evidence itself shows that the said opium was concealed under the floor in a pit which was covered by gunny bags and grass. The evidence on record shows that raiding party was required to dig out the floor. The said opium was covered by grass and gunny bag. Therefore, a person could not have

knowledge of that unless he had specific reason to know about that. The prosecution evidence does not show that there was any nexus between said concealed opium and present respondent.

7. Further more, the evidence on record itself shows that besides respondent, his brothers were also residing in the house. The prosecution evidence does not prove it to the extent of acceptance that respondent was in exclusive possession of the said room.

8. Possession always requires that it should be a conscious possession and conscious possession requires two things (i) dominion over the contraband article and (ii) knowledge of it. On these two counts the prosecution has failed in this case and, therefore, the learned A.S.J. has rightly recorded a finding that respondent was not in conscious possession of said opium. I do not find that the order of acquittal recorded in favour of respondent by A.S.J. is any way incorrect, improper. It is not illegal. The High Court should not interfere in the order of acquittal unless it comes to the conclusion that it is perverse or illegal.

9. Thus, this appeal fails. The order of acquittal recorded in favour of respondent is hereby approved and appeal preferred by the State is hereby dismissed. The bail bonds furnished by the respondent shall stand discharged.