

Kasinath Poddar and anr. Vs. the State

Kasinath Poddar and anr. Vs. the State

SooperKanoon Citation : sooperkanoon.com/525689

Court : Orissa

Decided On : Jan-09-1957

Reported in : AIR1957Ori93; 23(1957)CLT217; 1957CriLJ527

Judge : Narasimham, C.J.

Acts : [Opium Act, 1878](#) - Sections 4 and 9; [Dangerous Drugs Act, 1930](#) - Sectiona 2 and 7(2); Dangerous Drugs (Import, Export and Transhipment) Rules, 1933 - Rules 4(1) and 11; Orissa Opium Rules, 1937 - Rules 8(4) and 9(4); Orissa Dangerous Drugs Rules, 1937 - Rule 9; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Criminal Revn. No. 120 of 1956

Appellant : Kasinath Poddar and anr.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : G.K. Misra, Adv.

Judgement :

Narasimham, C.J.

1. This revision is against the appellate judgment of the Sessions Judge of Cuttack modifying the judgment of the trial court, but maintaining the conviction of the petitioners under Section 9(a) of the Opium Act (Act I of 1878) for unlawful

possession of 32 bags of poppy capsules. The Excise Sub-Inspector of Dhenkanal (P. W. 4) seized the said 32 bags of capsules on the 19-1-1954 and sent some of the capsules to the Chemical Examiner, Calcutta, whose report (Ext. 2) was to the effect that they contained ingredients of opium. P. W. 4 further stated that all the seized capsules bore marks of incision indicating that the juice had been extracted,

2. The petitioners admitted the recovery of the capsules of the poppy from their possession but urged that possession of incised capsules from which the Juice had been extracted would not amount to an offence under Section 9(a) of the Opium Act. The lower appellate court, however, thought, relying on Jagjiwan Pitambar v. Emperor, AIR 1936 Nag 240 (A) that possession of such incised capsules also would be an offence, though it would not call for a severe sentence,

3. The main question for decision, therefore, is whether unauthorised possession of incised capsules of the poppy from which the juice had been extracted would amount to an offence under Section 9(a) of the Opium Act. For this purpose one must carefully scrutinise the provisions of the Opium Act (Act I of 1878), the Dangerous Drugs Act 1930 (Act II of 1930) and the Rules framed under the aforesaid Acts. It is true that under Section 3(1) of the Opium Act the definition of the expression 'opium' includes 'capsules of the poppy'. But Section 4 of that Act prohibits unlawful possession of opium.

'Except as permitted by this Act or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment.....'

The [Dangerous Drugs Act, 1930](#) which is supplementary to the Opium Act is undoubtedly an 'enactment relating to opium for the time being in force' as contemplated in Section 4 of the Opium Act, and consequently if either under that Act or under the Rules framed thereunder there is no prohibition against possession of incised capsules of the poppy from which the juice had been extracted, such possession would become authorised possession for the purpose of Section 4 of the Opium Act also and consequently would not amount to an offence under Section 9(a) of that Act.

It is therefore necessary to examine carefully the relevant provisions of the Dangerous Drugs Act and the rules and notifications made thereunder. The definition of the expression 'opium' in the Dangerous Drugs Act is identical with the definition given in the Opium Act and would include capsules of the poppy also -- see Section 2(e)(i) of the Dangerous Drugs Act, But rule 4(1) of the Dangerous Drugs (Import, Export and Transshipment) Rules 1933, made under S, 7(2) of the Dangerous Drugs Act, is as follows:

'4(1) General. No dangerous drug shall be imported into British India by sea or by land, save in accordance with the conditions specified in the third column of the annexed table for the import of the dangerous drugs specified in the corresponding entry in the first column thereof, from the places specified in the corresponding entry in the second column thereof;

Provided that a Provincial Government may by general or special order permit a traveller to import personally into British India by land from any Indian State or foreign settlement in India, opium or hemp up to the limit of quantity within which possession by him is allowed without a pass on the British Indian side of the Frontier.

Provided further that capsules of the poppy which have been lanced and dried or from which the juice has been extracted may be imported by any person without restriction into British India by Land from any Indian State or foreign settlement in India.' -The first proviso makes it clear that the import of opium into India up to the limit of quantity within which possession is allowed in India may be permitted.

The second proviso further says' that capsules of the poppy which have been lanced and dried or from which the juice has been extracted may be imported without any restriction. When the two provisos are read together, it would appear that the permissible limit of quantity for import is the same as the permissible limit of quantity for the purpose of possession, and hence when the proviso expressly says that dried capsules which have been lanced or from which the juice has been extracted may be imported without any restriction, it necessarily follows that the possession of such capsules is also permissible. Similarly, Rule 11(d) of the said rules which deals with exports of opium and other dangerous drugs is as follows:

'11(d). Capsules of the poppy which have been lanced and dried or from which the juice has been extracted may be exported by any person without restriction to a French or Portuguese settlement in India or to a State in India.'

Thus, the export and import of dried and incised capsules of the poppy or these from which the juice has been extracted is permitted without any restriction. Both in the Opium Act and in the Dangerous Drugs Act, possession, import, export and transport of dangerous drugs are all dealt with on the same footing; and the limit, of permissible quantity of possession is generally the same as the limit of permissible quantity for the purpose of export or import. This follows as a necessary inference because a person cannot import or export an excisable article unless he can first possess the same, and if the import and export of dried capsules of the poppy are permitted without any restriction it necessarily follows that possession of such dried and incised capsules must also be without any restriction. This principle will be clear if Rule 9 of the Orissa Dangerous Drugs Rules 1937 quoted below be scrutinised:

'9. Any person may transport or import interprovincially dangerous medicinal drugs which he may lawfully possess under Rule 4'. A scrutiny of the rules made under the Opium Act will also support the same view. Thus, the proviso to Rule 8(4) of the Orissa Opium Rules 1937 is as follows: 'Provided that a bona fide traveller coming into the Province of Orissa from another part of India may bring with him opium personally into Orissa by land from any Indian State or foreign settlement in India, up to the limit of quantity within which possession by him is allowed, without a pass, on the British side of the frontier.'

Similarly, Rule 9(4) of the said Rules reads as follows:

'(4) A bona fide traveller leaving Orissa may, subject to such rules as may be in force at the places through which he passes and at his destination, take with him any opium, medicinal drugs containing opium, or poppy heads which he may lawfully possess under Rule 3'.

(The aforesaid Acts and Rules should doubtless be construed in the light of the adaptations made by the Adaptation of Laws Order 1950).

4-5. It is true that there is no express provision either in the rules made under the Opium Act or under the Dangerous Drugs Act authorising unrestricted possession of lanced and dried capsules of the poppy or of capsules from which the juice had been extracted. But as pointed out above the excise laws treat possession, transport, export and import on the same footing and when the rules framed under the Dangerous Drugs Act expressly authorised unrestricted import and export of capsules of the poppy which had been lanced and dried or from which the juice had been extracted, it follows as a necessary inference that possession of such poppy ears is also unrestricted. If such possession is unrestricted under the rules made under the Dangerous Drugs Act it further follows that such possession is not prohibited by Section 4 of the Opium Act and would not amount to an offence under S, 9(a) of that Act.

6. The Nagpur decision on which the lower appellate court has relied AIR 1936 Nag 240 (A) is clearly distinguishable. There the rules made under the Dangerous Drugs Act permitting unrestricted import and export of dried capsules of the poppy were not considered at all.

7. On behalf of the State, however, Mr. Acharya contended that the aforesaid provisos to Rule 4(1) and Rule 11 (d) of the Dangerous Drugs (Import, Export and Transhipment) Rules 1933 would apply only to those capsules of the poppy from which all traces of opium have been removed and not to those dried capsules which, on chemical examination, are found to contain ingredients of opium as in the present case. But a reasonable construction should be given to the words 'capsules of the poppy which have been lanced and dried, or from which the juice had been extracted' occurring in the said provisos.

When the proviso was inserted by the competent authority it was intended to apply to these capsules of the poppy which, on account of the incision and removal of the juice, are free from opium to a very large extent, but it is difficult to remove all traces of opium from such capsules unless a specially efficient process of extraction of the juice is adopted. I do not think that the makers of the rules contemplated extraction of the juice by a mechanical or chemical process of such a degree of efficiency as to leave the dried capsules absolutely free from all traces

of opium, The words used are "from which the juice has been extracted' and not 'from which the juice has been completely extracted'. Doubtless, it will very often be a question of fact as to whether, in a case where most of the juice remains in a coagulated condition inside the capsule even though it may be lanced, the benefit of the proviso to Rule 4(1) of the Dangerous Drugs (Import, Export and Transshipment) Rules 1933 may not be available to a person in unauthorised possession of the same. But ordinarily where the capsules have been proved to have been incised and the Excise Officer himself frankly says that in the seized capsules the juice is found to have been extracted the reasonable inference is that the capsules come within the scope of the said proviso and the possession, export and import of such capsules is unrestricted.

8. For the aforesaid reasons I would hold that the petitioners are not guilty of the offence with which they were charged. Their conviction and sentence are set aside and they are acquitted. The seized capsules of the poppy should be returned to them.