

The State Vs. Mohan Patra

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Court : Orissa

Decided On : Mar-04-1960

Reported in : 26(1960)CLT322; 1961CriLJ828

Judge : G.C. Das, J.

Appellant : The State

Respondent : Mohan Patra

Judgement :

G.C. Das, J.

1.This is an appeal by the State or Orissa directed against an order of acquittal of the respondent, recorded by the Sessions Judge of Mayurbhanj in Criminal Appeal No. 38-M of 1959.

2. the prosecution case was that the respondent's house was raided on December 29, 1958, at about 7 A.M. in the presence of P.W. 2 and other search witnesses. The house of the respondent was a single-roomed house wherefrom opium weighing about half a tola was recovered. Admittedly the respondent had no permission for possession of that quantity of opium. Accordingly he was charged under Section 9(a) of the Opium Act.

Before the trial judge the respondent pleaded guilty to the charge, after which he was given an opportunity to cross-examine P.Ws. 1 and 2 under Section 256 of the Cr.P. Code. The respondent in his 342 statement admitted the recovery of the opium from his house but stated that he did not know as to how the opium came about into his house. He also examined two defence witnesses in support of his case.

3. The trial Judge, however, found him guilty under Section 9(a) of the .Opium Act and sentenced him to undergo R. I. for two months and to pay a fine of Rs. 30/- in default of payment to undergo further R. I. for one month. Against this order of conviction the respondent filed an appeal before the Sessions Judge. His contention before the Court of appeal was that the search as a result of which the opium was seized was not a proper search. This argument of his found favour with the learned Sessions Judge and he eventually acquitted him.

4. The Government Advocate in support of the appeal contended that the search was conducted after the personal search of the police officer and the search witnesses in the presence of the respondent. Hence the judgment of the Court of appeal is vitiated by error of record. On a perusal of the prosecution evidence, it appears that P.W. 2 had stated that the accused was also present at the time when he and Kailash Giri (another search witness) gave personal search to the Sub-Inspector.

The Sub-inspector has been examined as P.W. 1. He does not breath a word about the personal search either of himself or of the search witnesses. There is some discrepancy about the time and the manner in which the search was made, It is admitted by the prosecution that the father of the accused also lives with him and stays in that house whenever he, comes from Baripada, the whole object of conducting a search in accordance with law is to safeguard the interest of the accused person.

The law lays down that the persons of the search witnesses and of the Police party must be searched before they are allowed to enter the house so that the owner would not have reasonable ground for suspecting that one of the search party had planted something surreptitiously in his house (vide AIR 1933 Oudh 305 Sohanlal

v. Emperor).

5. The principle is that the police party and the witnesses must be given, a personal search before they enter the house, so that there may not be any misapprehension in the mind of the house owner regarding implantation of the excise article. Even if according to the search witnesses and the Sub-Inspector of Police a personal search was given inside the house that does not exclude the possibility of implanting the seized article before giving the search.

A similar view was taken by the Allahabad High Court in the case of Mahomed Ali Khan v. Emperor AIR 1933 All 438. Their Lordships of the Allahabad High Court laid down that the rule as to the search of the constables and the search witnesses before entering the house of a person suspected of possessing excisable articles ought not to be neglected.

Where an informer under the Excise Act obtains a substantial reward for information leading to a conviction, there is a very great temptation for him, acting in conjunction with the police constables, to plant in the house of a suspected person excisable articles in order that he may obtain the reward. It is for these reasons, among others, that the rule has been laid down that every one engaged in a raid must be searched to see that there is no excisable article upon him.

Failure to carry out this rule must give to the defence a very strong argument against conviction and will cause a doubt in cases where the excisable articles found are small in quantity. In the instant case the whole conviction is based upon a recovery of half a tola of opium from two places from inside the house of the respondent. The Government Advocate argued that the search may amount to an irregularity but the accused before he can claim an acquittal must show that he has been prejudiced at the trial.

The question of irregularity or prejudice to my mind does not apply to the present case. The whole conviction in this case is based upon the recovery of an excisable article from inside the house of the respondent. If there is slightest suspicion that either the police party or the search witnesses had implanted the said article in the room of the respondent, it would be unsafe to convict him on that seizure alone.

There is no other evidence to warrant a conviction. Hence I do not feel inclined to interfere with the order of acquittal as recorded by the learned Sessions Judge.

In the result, the appeal is dismissed.

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