

**Satar Masiah Vs. the State**

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**Court :** Delhi

**Decided On :** May-05-1982

**Reported in :** 1982CriLJ2286; 22(1982)DLT134; 1982RLR519

**Judge :** J.D. Jain, J.

**Acts :** Punjab Excise Act - Sections 61; Opium Act - Sections 9; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 361; [Probation of Offenders Act, 1958](#) - Sections 4

**Appeal No. :** Criminal Revn. No. 102 of 1982 (Against order of R.P. Gupta, Addl. Sessions Judge, New Delhi, D/- 26

**Appellant :** Satar Masiah

**Respondent :** The State

**Judgement :**

ORDER

1. The petitioner had been convicted of offences under section 61 of the Punjab Excise Act and S. 9 of the Opium Act and had been sentenced to rigorous imprisonment for six months and fine of Rs. 100/- on first count and rigorous imprisonment for three months on the second. However both the sentences of imprisonment were made to run concurrently. The conviction and sentence of the appellant has been maintained by the Additional Sessions Judge in appeal.

1A. This revision petition was admitted only on the question of sentence and notice to the state (C.B.I. in the instant case) was issued. The submission made by the learned counsel for the petitioner precisely is that the petitioner is a young man with no prior shady antecedents and he is not a previous convict, rather he is carrying on his business of auto repair workshop at Amritsar and earning his livelihood by dint of hard work.

2. To have a peep into the facts under which the petitioner was apprehended, the prosecution version may be briefly stated. On 6th November 1978, Shri B. N. Mishra, D.S.P. (C.B.I.) received some secret information and organized a raiding party comprising inter alia two officials of the Electricity Department. The raiding party went to Gali Kalyan Katra Baryan along with the informer who pointed towards two persons viz, the petitioner and one Sant Singh who were standing by the side of a shop styled 'Lovely Paints' near the entrance of the street. At the signal of the informer both the persons were apprehended and the petitioner was found in possession of a tin box which yielded 2 Kgs. of hashish and 200 grams of opium. Similarly on search of the canvass bag which was carried by Sant Singh 3 Kgs. of hashish and 300 grams of opium was recovered. The submission of the learned counsel for the State, however, is that according to the information received by the Deputy Superintendent of Police both the persons were indulging in trafficking of contraband opium and hashish. However, there is no iota of evidence to support the allegation except the bald statement of Shri Misra.

3. Reliance has been placed by the learned counsel for the petitioner on a judgment of this Court in Tek Bahadur v. State, (1982) 21 Delhi LT 233 in which 2 Kgs. of opium was seized from the accused. Tek Bahadur who hailed from the interior of Nepal. After calling a report from the Probation Officer and having regard to the recommendation made by the Probation Officer Charanjit, Talwar J. allowed the petition and directed the release of the petitioner therein on probation of good conduct. The instant case is, however, sought to be distinguished by the learned counsel for the State on the ground that there was no allegation therein that the petitioner was wanting or going to sell the opium to any consumer generally and apparently he was a mere carrier and was a tool in the hands of some anti-social elements. Such a possibility has not been ruled out even in the

instant case because there is no specific evidence that the petitioner was in fact indulging in anti-social activities by selling the contraband and the possibility of his being a mere carrier cannot be ruled out. It may be noticed that he hails from the District Amritsar although he happens to reside in House No. 6429, Gali Kalyan, Katra Daryan, Delhi also.

4. The Probation Officer has reported that the petitioner belongs to a Christian family and the economic condition of the family is quite satisfactory. The petitioner opened an auto repair workshop at Amritsar about 5 years ago and he is earning about Rs. 1500/- per mensem there from. There is no adverse report regarding his antecedents, family background or his involvement in any other anti-social activities. So it would appear that the petitioner had fallen into the hands of some anti-social persons and indulged in carrying contraband like opium and hashish. He is not a previous convict. This is further confirmed by a report produced by the counsel for the petitioner from the S.H.O. of Police Station concerned in District Amritsar which has been countersigned by the Judicial Magistrate, 1st Class, Amritsar. The learned counsel for the petitioner has also shown to me the registration and other documents issued by the Transport Authority, Amritsar showing that he is a registered owner of a taxi Ambassador make bearing registration No. PBA-9000. The original registration book has been issued by the Transport Authority, Amritsar.

5. Keeping all these facts in view I am very much inclined to hold that the petitioner has not yet reached a point of no return and he cannot be said to be beyond redemption. His criminal proclivity seems to be a recent one.

6. Section 361 which is a new provision in the Cr.P.C. of 1973 makes it mandatory of Court to record in its judgment the 'special reasons' for not releasing offender on probation of good conduct where the circumstances indicate that he could have been dealt with under the [Probation of Offenders Act, 1958](#). The Court has, therefore, to examine the age, character or antecedents of the offender and also the circumstances in which the offence was committed and unless it comes to the conclusion that it is impossible to reform and rehabilitate the offender there is no reason why the benefit of the Probation of Offenders Act be not given to the

accused. The learned counsel for the State is fair and candid enough to concede that provision of S. 4 of the said Act can be invoked in the instant case. therefore, I am unable to conceive of any special reasons which may compel me not to give the benefit of the said Act to the petitioner.

7. Under the circumstances, I direct that the petitioner be released on probation of good conduct on his furnishing a bond in the sum of Rs. 4000/- with one surety in the like amount to the satisfaction of the trial court viz. the Additional Chief Metropolitan Magistrate. New Delhi that he shall appear and receive sentence within a period of two years if and when called upon to do so by the Court concerned and in the meantime he shall be of good behavior and keep peace.

8. It may, however, be further clarified that in view of proviso to Section 4 of the Probation of Offenders Act the Additional Chief Metropolitan Magistrate shall ensure that the surety has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

9. This revision petition stands disposed of accordingly.

10. Petition released on probation.