

Tek Bahadur Vs. the State

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Court : Delhi

Decided On : Jan-14-1982

Reported in : 21(1982)DLT233

Judge : Charanjit Talwar, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : Criminal Revision Appeal No. 190 of 1981

Appellant : Tek Bahadur

Respondent : The State

Advocate for Pet/Ap. : K.K. Sud and; B.N. Mittal, Advs

Judgement :

Charanjit Talwar, J.

(1) By this petition Tek Bahadur has challenged his conviction under Section 9 of the Opium Act, 1878, and the sentence of 1' years rigorous imprisonment and imposition of fine of Rs. 500.00 by the Additional Chief Metropolitan Magistrate, Delhi, which have been upheld by the Additional Sessions Judge, Delhi, vide judgment dated 26th June, 1981.

(2) This petition was admitted on the question of sentence only, as while affirming the sentence the first appellate Court had not considered the question of extending the benefit of the provisions of probation of offenders Act to be the petitioner herein. A report from the Probation Officer regarding the antecedents, character, family background, education and present employment as also other particulars of the petitioner was sent for J.D. Jain, J. vide his order passed on 7th August, 1981. The minutes of proceedings of 2nd December, 1981, show that the report of the Probation Officer recommending the benefit of probation under Section 4 of the probation of Offenders Act was permitted to be placed on the record; counsel for the State was granted time to study it.

(3) It is not necessary to analyze the case on merits. Suffice it to note that on 4th May, 1978, at about 8.30 a.m., the petitioner herein when apprehended was found in possession of 2 kgs. of opium.

(4) Mr. K.K. Sud, learned counsel for the petitioner, submitted that in view of the report of the Probation Officer it was a fit case for the release of the petitioner on probation.

(5) Mr. R.N. Mittal, appearing for the State, however, contended that in view of the huge quantity of opium recovered from the petitioner and the offence being anti-social, the Court ought not to exercise its discretion in favor of the petitioner notwithstanding the recommendation of the Probation Officer. According to Mr. Mittal the facts of the present case do not warrant the release of the petitioner on probation. He urged that the quantity of opium recovered and the nature of the offence constitute special reason for maintaining the sentence awarded to the petitioner by the trial Court and affirmed by the first appellate Court.

(6) The report of the Probation Officer shows that the petitioner is a young man of about 30 years of age. He hails from the interior of Nepal. He is educated up to 8th class. He came to Delhi about ten years ago in search of a job. For about three years he worked with an Opticians at Moti Nagar, Delhi, at a monthly salary of Rs. 30/-. Since 1974 he is working with M/s Sylvania and Luxman Ltd. and is getting about Rs. 400.00 per month. His immediate superiors, namely, the Foreman and the Branch Manager are of the view that he is obedient, hardworking and a simple

person. He never gave them any chance of a complaint. His co-workers and his neighbours speak highly of him. He is a religious man and has no bad habits. He has two young children and his wife is expecting another child. The petitioner, according to the report is not a previous convict and is the only bread-earner of his family there is no one else to support them. According to the Probation Officer the possibility that some undesirable element has taken advantage of the petitioner's simplicity, cannot be ruled out. The report suggests that the petitioner was a cat's paw, at the time when he committed the crime. Keeping in view the facts and circumstances, the antecedents and behavior of the petitioner the Probation Officer recommends that the petitioner be given the benefit of the provision of Section 4 of the Act and further that he be placed under surveillance of the Probation Officer for some time so that proper counselling can be given to him and close watch be kept on him.

(7) As noticed above, Mr. Mittal urges that this court should not accept the recommendation of the Probation Officer. In all fairness, however, he conceded that it was open to this Court to release the petitioner who has been convicted for an offence under the Opium Act on Probation but because of the large quantity of the opium recovered in this case, no leniency should be shown to the petitioner. In support of his contention Mr. Mittal cited *Prem Ballabh and another v. The State*; : 1977 CriLJ12 . In the said case the petitioner had been convicted under Section 7(i) read with' Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. He was refused the benefit of Probation,inter alia, on the ground that 'The imperative of social defenses must discourage the applicability of the probation principle. No chances can be taken by society with a man whose anti-social activities, in the guise of a respectable trade, Jeopardise the health and well- being of numerous innocent consumers' .

(8) The principle enunciated by their Lordships, as noticed above does not apply to the facts of the present case. There is no allegation herein that the petitioner was wanting or going to sell the opium in question to any consumers generally. As noted earlier, it is apparent that he was a mere carrier and was a tool in the hands of some anti-social elements.

(9) Mr. K.K. Sud, learned counsel for the petitioner, on the other hand, has relied on a catena of authorities where in for an offence under Probation. In one of the cases relied the opium recovered was 8 Kgs. (See Sharafat Ali v. The State of Haryana, 1978 C.L.R. 294, wherein it was held that possession of 8 Kgs. of illicit opium by itself did not appear to disentitle the petitioner from release on probation. In the said case the petitioner was a young boy of 21 years and the Probation Officer had expressed his opinion that his release on probation might not be beneficial for the society.

(10) In view of the report of the Probation Officer I cannot persuade myself to hold that there are any reasons, muchless special reasons, to compel me to come to a finding that it is impossible to reform or rehabilitate the petitioner. I accordingly accept the report of the Probation Officer. I agree with him that sending the petitioner to jail for undergoing the sentence would amount to ruining the life of his young wife and small children; there is no one else to support them, the petitioner being the only bread-earner of the family. thereforee I allow this plea. I direct that the petitioner be released on his furnishing a bond in the sum of Rs. 2000.00 with one surety of the like amount within one month from to-day, to keep peace and be of good behavior for a period of one year from the date of this order. The petition stands dispose of.