

Anaram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-13-1977

Reported in : 1977WLN99

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Revision No. 413 of 1976

Appellant : Anaram

Respondent : State of Rajasthan

Judgement :

M.L. Jain, J.

1. On 2nd October, 1972, Ratan Singh PW 6 Station House Officer Gudamalani got the information that revision petitioner Anaram was smuggling opium. With six constables he arrived on the Bus Stand Gandhav. Anaram was there in the bus which was coming from Barmer. Anaram was surrounded and was searched. The search yielded 1.860 Kgs. of opium from his possession. It was seized by the Police and 30 gms. was sent for chemical examination. The report of the Assistant Director, Chemical Section, Police Forensic Science Laboratory, C.I.D Rajasthan, Jaipur is Ex. P. 6. The parcel Which was received by the said Director contained only 28 gms. of solid darks brown coloured substance. The result of examination was that it was opium as it had 5.75% morphine. The accused was challenged

under Section 9 of the Opium Act. He was convicted by the Chief Judicial Magistrate, Barmer, on 29-7-74 under the said section and sentenced to undergo rigorous imprisonment for 12 months and to a fine of Rs. 1500/- in default where of to further simple imprisonment for six months. The learned Sessions Judge, Balotra by his judgment dated 6-10-1976 dismissed the appeal. Hence, this revision.

2. The learned Counsel for the accused submitted that the case suffers from several illegalities and the conviction deserves to be quashed. In any case, the accused was entitled to the benefit of probation or at least to be let off on the sentence already undergone by him.

3. His first contention is that it was the duty of the prosecution to show that the seals on the sample of the article seized were not tampered with between the time of the seizure and delivery thereof to the Chemical Examiner. The learned lower court failed to notice that while the quantity of the sample seized was 30 gms. as per the statement of Ratansingh PW 6, the quantity that was received by the Chemical Examiner was only 28 grams. The constable who carried the sample to the Chemical Examiner is Jagmalaram PW 5. He had taken several samples of opium to the Chemical Examiner. It shows that several samples were in possession of the police and several were delivered to the Chemical Examiner. The aforesaid difference in the quantity therefore, raised a doubt whether the sample to which the reports Ex. P. 6 relates, was the same which was recovered from the accused. Unless the identity of the sample is established the report of the Chemical Examiner cannot be read against the accused. The learned Counsel then submitted that the seizure itself was not proved because the motbirs have turned hostile and have deposed that the article was lying on the table. Along with Ratansingh PW 6 there was a constable who actually seized the article but he was not produced. It is very necessary in such cases that satisfactory evidence of the seizure of the incriminating article is led before the court, otherwise there is always a danger of the police planting opium on any person. The case of the accused had been that the smuggler of the opium was some Gordhan but he was let off and the petitioner was instead arrested and prosecuted. The learned Counsel further submitted that under Section 510 Cr. P.C. (old) it is the report of the chemical

examiner which is made admissible. The report Ex. P. 6 is of the Assistant Director, Chemical Section, Forensic Science Laboratory and it is not known whether the said officer was appointed as Chemical Examiner by the State Government. The report therefore, is not admissible in evidence under Section 510 Cr. P.C. Lastly, it was contended that the report of the Analyst is that the substance contains certain percentage of morphine, but morphine is not opium & the details of other constituents have not been stated which put together constitute what opium is.

4. I have considered all these contentions, J. Section 3 of the opium Act defines opium and states three categories thereof. It is only in case of a mixture that an analysis is necessary in order to determine whether the mixture is opium or not but where the article is spontaneously coagulated juice of capsules of peppy and has not been submitted to any manipulation, no chemical examination is necessary. In *Baidyanath Mishra and Anr. v. State of Orissa (1967) SCD 165* the Supreme Court has observed as follows:

It is true that opium is a substance which once seen and smelt can never be forgotten because opium possesses a characteristic appearance and a very strong and characteristic scent. It is possible for people to identify opium without having to subject the produce to a chemical analysis. It is only when opium is in a mixture so diluted that its essential characteristics are not easily visible or capable of being apprehended by the senses that a chemical analysis may be necessary.

5. In *State v. Sakharam and Ors. 1976 Cr LR (Raj.) 237*, I have had an occasion to deal with a similar type of case and I had observed at para 9 that people by smell can identify opium. In this case, the motbirs have stated that the article was opium.

The two courts below have also said that the article in question was opium. I therefore, see no reason to doubt that the article seized by the police was opium. Once it is held that the article so seized from the possession of the accused was opium, it is not necessary to deal with the other, arguments whether the chemical report is admissible or not or whether there was a difference in the quantity of the sample sent to the chemical examiner. As regards the question of seizure is concerned, I think the evidence led by the prosecution and believed by the two

courts below is cogent and sufficient to connect the accused with the incriminating article. As a matter of fact, the article was recovered from his very person. Even if the motbir witnesses have turned hostile, the evidence of the police witnesses in the absence of any allegation of animosity can not be rejected our right.

6. I therefore, see no force in any of the arguments advanced on behalf of the petitioner and this revision petition is here by rejected.

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