

In Re: Angappa Mudaliar and anr.

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SooperKanoon Citation : sooperkanoon.com/806342

Court : Chennai

Decided On : Aug-02-1944

Reported in : AIR1945Mad52

Appellant : In Re: Angappa Mudaliar and anr.

Judgement :

ORDER

Byers, J.

1. On the night of 25th July 1943, petitioner 1 was found in possession of half a cake of opium which he was carrying on behalf of petitioner 2 to the latter's opium shop at Barghur; and when asked to account for his possession, he produced a transport license issued in the name of petitioner 2, who is a licensed vendor. Petitioner 1 is a debarred person within the meaning of condition 14 in the vendor's license. Both the petitioners were convicted for offences punishable Under Section 9 (b), Opium Act, petitioner 1 for transporting the drug without a valid license, and petitioner 2 for employing a debarred person contrary to condition 14 of his license. So far as petitioner 1 is concerned, it is stated in the conditions governing the sale of opium that

no person who has been debarred by the Collector from bidding at the sales of abkari or opium shops shall be employed in any capacity in connexion with management or the working of shops or depots, licensed for the sale of liquor,

opium or intoxicating drugs.

2. These words are sufficiently wide to cover the transport of opium from one shop to another in accordance with the rules; and as the permit which petitioner 1 had in his possession was not issued in his name, his conviction Under Section 9(b) cannot be assailed.

3. Regarding petitioner 2 the learned Public Prosecutor has pointed out that there is a lacuna in the Act as it makes no provision for the prosecution of offenders who commit breaches of the conditions of their licenses. Rules have been framed by the Local Government Under Section 5, Opium Act, and Rule 21 gives the Collector power to cancel or suspend any license or permit for a breach of the conditions or on conviction for an offence under the Act; but there is nothing in the Act corresponding to Section 56, Madras Abkari Act, under which a breach of the conditions is punishable under the Act. It is clear that petitioner 2 committed a breach of condition 14 of his license by employing petitioner 1 as a servant to carry the Opium from one shop to another; but as the rules stand, this is punishable only by cancellation or suspension of the license Under Rule 11(b) or Rule 21 of the rules. In the result the conviction and sentence of petitioner 1 are confirmed, and the conviction of petitioner 2 is set aside and the fine, if paid ordered to be refunded.