

Fong Kun Vs. Emperor

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Court : Kolkata

Decided On : Apr-01-1919

Reported in : (1919)ILR46Cal820

Judge : Richardson and ;Shams-ul-Huda, JJ.

Appellant : Fong Kun

Respondent : Emperor

Judgement :

Richardson, J.

1. The petitioner, Fong Kun, has been convicted under Section 9 of the Opium Act (I of 1875) of being in possession of contraband opium and sentenced to rigorous imprisonment for six months. A railway receipt was traced to the possession of the petitioner which covered a parcel consigned to him by a correspondent in Assam. A letter addressed to the petitioner advising him of the despatch of the parcel was recovered at the same time. In that letter the contents of the parcel were described as 'five numbers.' The parcel was subsequently opened and found to contain five seers of opium. The circumstances leave no room for doubt that the petitioner was trafficking in smuggled opium.

2. It was held in Kashi Nath Bania v. Emperor (1905) I.L.R. 32 Calc. 557, that in such a case, the consignee knowing that the parcel had been sent to him and that

it contained opium, the possession of the railway receipt constituted possession of the opium within the meaning of Section 9 of the Opium Act. That case was followed, though reluctantly, in *Ashruf All v. Emperor* (1909) I.L.R. 36 Cal. 1016, and we are bound by these decisions unless we are able to hold, as the Court held in *Kali Charan Mukherjee v. Emperor* (1913) I.L.R. 41 Cal. 537, that on the facts they are distinguishable.

3. It is suggested here that because two days before the railway receipt came into the petitioner's hand, the police, acting on information received, had told the Railway parcel clerk not to part with the parcel and had tied a piece of red tape round it and sealed it, therefore the petitioner as holder of the receipt had no possession of the parcel. The precautions taken by the police were intended merely to, prevent delivery being given without their cognizance. At the time neither the police nor the parcel clerk knew for certain what was in the parcel. Nothing was done which affected the legal rights of the, parties or deprived the petitioner of possession or right to possession under and by virtue of the receipt. His possession continued until the parcel was opened and the opium was actually seized. That was after the receipt had been obtained from the petitioner. The facts, as it seems to me, do not justify a distinction being drawn between the present case and the cases to which I have referred.

4. On that ground, or on the ground suggested by my learned brother that the petitioner was at any rate guilty of importing opium, in my opinion, this is not a case in which we ought to interfere in revision, and the Rule must be discharged.

5. The petitioner must surrender to his bail and undergo the unexpired portion of his imprisonment.

Shams-UI-Huda, J.

6. I feel considerable doubt whether, in the circumstances proved in this case, the petitioner could be said to be in possession of opium within the meaning of Section 9, Clause (c) of the Opium Act. In my opinion, however, the petitioner was clearly guilty of importing opium under Clause (e), and might have been convicted of that offence. In the view I take, I do not think that this is a fit case for our interference in

revision.

7. I accordingly agree with my learned brother in discharging the Rule.

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