

ishwar Chandra Singh Vs. Emperor

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Court : Kolkata

Decided On : Mar-23-1910

Reported in : (1910)ILR37Cal581

Judge : Stephen and ;Carnduff, JJ.

Appellant : ishwar Chandra Singh

Respondent : Emperor

Judgement :

Stephen and Carnduff, JJ.

1. The petitioner in this case was charged with having sold opium in contravention of the provisions of the Opium Act, 1878, and the rules framed thereunder. This is, of course, a charge of an offence under Section 9, Clause (f), of the Act. The facts of the case have not been disputed before us, and, as far as we are concerned with them, are as follows. The petitioner, Ishwar Chandra Singh, is the servant of one Johiruddin Bepari, who has a shop at Mahajan's Hat, at some little distance from Chittagong, and is licensed under the Act to sell opium there. On the 22nd March 1909, Ishwar bought, on behalf of his master, a seer of opium from the Excise Office at Chittagong. It was his duty, under the rules applicable to the case, to transport the opium within two days of its purchase to the premises at Mahajan's Hat, where alone, under the terms of the license, it was lawful to sell it, and it is not denied that it was an offence to sell it anywhere else. He did not take it to

Mahajan's Hat within the prescribed time, and, when asked what had become of it, he said that it had been stolen, a statement which has been disbelieved, for very good reasons, by both the Courts below. He has, therefore, failed to account for the opium he received; but we have granted this rule on the District Magistrate calling on him to show cause why the conviction should not be set aside on the ground that the facts found do not disclose the commission of the particular offence charged.

2. The Judge in the Court of Appeal below has found that, although there is absolutely no evidence of the alleged sale, there is some circumstantial evidence, which, taken with the provisions of Section 10 of the Act, was sufficient for the conviction of the petitioner. We agree as to the absence of any evidence of a sale, but prefer to say that what evidence there is merely shows that there was plenty of opportunity for a sale, and raises a suspicion that the petitioner sold the opium. But we fail to understand how any deficiency in the evidence as to the fact of sale can be supplied by the presumption referred to. Section 9 of the Act penalises certain acts done in relation to opium, if done illicitly, and Section 10 runs as follows:

In prosecutions under Section 9 it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily, is opium in respect of which he has committed an offence under this Act.

3. Now, penal clauses in Acts must be construed in the same way as others; and it is obvious that in the latter provision some limitation must be placed on the words 'all opium for which the accused is unable to account satisfactorily,' as the phrase would in terms include in any case most of the opium in the world. The intention, however, seems to us evident, and the effect of the two sections appears to be simply this, that, when once it is proved that an accused person has dealt with opium in any of the ways described in Section 9, the onus of proving that he had a right so to deal with it is thrown on him by Section 10. But the commission of an act, which may be an offence, must be proved before the presumption comes into play at all, and, therefore, the presumption cannot be used to establish the fact.

4. The result is, that the defective evidence of the sale in this case cannot be supplemented by the presumption raised by Section 10, and the conviction for illicit sale is bad. On the other hand, it is clear that on the facts proved the petitioner might have been convicted of the unlawful transport of opium. We do not, therefore, consider it necessary to interfere in revision, and the rule is discharged.

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