

Keratali Vs. Emperor

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Court : Kolkata

Decided On : May-11-1934

Reported in : AIR1934Cal616,150Ind.Cas.980

Appellant : Keratali

Respondent : Emperor

Judgement :

Patterson, J.

1. The petitioner, Karat Ali, was arrested at Sitakund Railway Station on 31st December 1932, along with three other persons, named Abdul Jalil, Azahar and Badu Mia. Two seers of opium were found on the person of each of the petitioner's three companions, and another two seers of opium, wrapped up in a quilt, were found OK. the rack in the compartment in which they all four had been travelling. All four were sent up for trial under the Opium Act. Abdul Jalil, Azahar and Badu Mia pleaded guilty and were convicted and sentenced. The petitioner pleaded not guilty, and was tried separately on the allegation that the two seers of opium wrapped up in a quilt that was found on the rack had been in his possession. He was convicted by a Deputy Magistrate of Chitagong Under Section 9(c), Opium Act, 'and was sentenced to six months' rigorous imprisonment and to pay a fine of Rs. 300 and in default to undergo a further period of four months' rigorous imprisonments On appeal, the Magistrate's findings of fact were affirmed, but the

conviction. was altered to one Under Section 9(a), Opium Act, while the sentence was modified to this extent that the term of imprisonment in default of payment of fine was reduced to one month's rigorous imprisonment.

2. The present rule is directed against the conviction and sentence the main, contention that has been urged on behalf of the petitioner being that a certain statement that is said to have been made to the investigating Excise Officer by the petitioner's companion, Badu Mia, after his arrest, has been wrongly admitted in evidence. Badu Mia was after he had been convicted and sentenced, examined as a defence witness on behalf of the present petitioner. In his examination-in-chief he stated that the quilt and the opium that was found in it belonged to him, and that he had made a statement to this effect to the investigating Excise Officer. The Excise Officer was then recalled and examined further, and Badu Mia's statement as recorded by him, was tendered and received in evidence. In this statement Badu Mia implicates not only himself but also his three companions, and specially the present petitioner, Kerat Ali as participators in an attempt to smuggle the opium found concealed on their persons and wrapped up in the quilt, into Burmah, and it is undoubtedly in the nature of a confession. That being so, it would clearly have been inadmissible as a piece of substantive evidence as against its maker, a Full Bench of this Court having recently held that an Excise Officer is a Police Officer within the meaning of Section 25, Evidence Act: vide *Amin Shariff v. Emperor* : AIR1934 Cal580 . From this it follows that the statement in question would have been inadmissible as a piece of substantive evidence as against the present petitioner, even if the latter had been tried along with Badu Mia and a fortiori, that it was inadmissible as a piece of substantive evidence in the present proceedings. The Magistrate appears to have regarded Badu Mia's statement to the investigating Excise Officer as being admissible in evidence in its entirety, and to have relied on some of the allegations contained therein in support of his finding regarding the possession by the petitioner of the opium in question. The learned Sessions Judge, on the other hand, has dealt with Badu Mia's statement to the investigating Excise Officer on the footing that it was admissible for the purpose of impeaching his credit in respect of the later statement made by him in his evidence in Court. It really comes down to this, that Badu Mia's statement to the investigating Excise Officer has been used merely for the purpose of supporting

the evidence given by the latter to the effect that Badu Mia did not tell him after his arrest that the opium in question belonged to him alone, as stated by him in his evidence and of contradicting Badu Mia himself. I am clearly of opinion that this was permissible under the provisions of Section 155, Evidence Act.

3. It has however been suggested that even if Section 25, Evidence Act, be no bar to Badu Mia's statement being used for the purpose indicated above, Section 162, I.P.C. operates as a bar to its being so used. This involves the assumption that an Excise Officer is to be regarded as a Police Officer for the purposes of Section 162, Civil P.C., an assumption which is not supported by the recent Pull Bench decision, or by any other authority of which I am aware. It is true that Sections 160 to 171, Civil P.C., are made applicable by Section 74, Excise Act, to the proceedings of Excise Officers when investigating offences punishable under that Act, but there is no corresponding provision in the Opium Act, so the argument based on the provisions of Section 74, Excise Act has no application to the present case. Apart from the above considerations, it seems to me that even if Badu Mia's statement to the investigating Excise Officer be left out of account altogether, the evidence given by him in Court to the effect that the opium in question belonged to him alone, is quite unworthy of credit. His own evidence, when viewed in the light of the surrounding circumstances, makes it abundantly clear that he and his three companions including the present petitioner, were acting in concert throughout, and there is direct evidence which has been believed by both the Courts below to show that at any rate at one stage of the journey, the petitioner was in actual physical possession of the opium in question. I would accordingly order that the rule be discharged and that the petitioner should surrender to his bail and serve out the remainder of his sentence.

Guha, J.

4. I agree.