

Booth Vs. Emperor

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Court : Kolkata

Decided On : Sep-01-1913

Reported in : AIR1914Cal649,(1914)ILR41Cal545

Judge : Mookerjee and ;Beachcroft, JJ.

Appellant : Booth

Respondent : Emperor

Judgement :

Mookerjee and Beachcroft, JJ.

1. The appellant, C.H. Booth, was charged with the commission of an offence under Section 46 of the Bengal Excise Act, 1909, inasmuch as he had imported 491 ounces of cocaine without a license or pass. He was tried by the Second Presidency Magistrate of Calcutta, convicted and Sentenced to rigorous imprisonment for three months and payment of a fine of one thousand rupees.

2. The circumstances under which the appellant was convicted may be briefly stated in so far as they are disclosed by the evidence.

3. On the 23rd January, 1913, the Customs authorities discovered a large quantity of cocaine concealed in several bales of old clothes which had been exported from England by C. Porter & Co., by S.S. Borneo for delivery to the addressee, one

Rasu Prasad The invoice and bill of lading for the consignment had been made over by one Kali Charan Mukherjee to Cox & Co., in order that the goods might be cleared and passed through the Custom House. Kali Charan Mukherjee called at the office of Cox & Co., on the 23rd January, to take delivery, and was taken to the Customs authorities who had already discovered the cocaine secreted in the bales of clothes. What information enabled the Customs authorities to make the discovery has not been disclosed in the evidence and is not material for the purposes of the present case. It is sufficient to state that Kali Charan. Mukherjee was, prosecuted before the Chief Presidency Magistrate and was convicted; he moved this Court and obtained a rule. The rule has been discharged and the sentence affirmed, though the conviction has been altered to one under Section 61 of the Bengal Excise Act, namely, the offence of attempting to import cocaine in Contravention of the law See ante pp. 537, 544. As already stated, the bill of lading showed that the goods were consigned by Porter and Co., to Rasu Prasad, and bore the endorsements of both Porter and Co., and Rasu Prasad. The present appellant had ostensibly no connection with the incident, and we have not been told what circumstances led the investigating officers to suspect that the accused was in any way connected with the matter We know this much only that, on the 30th January 1913, an order was obtained from the Chief Presidency Magistrate to intercept all letters posted at Calcutta, to the address of Porter and Co., of London, and on the 3rd of February a similar order was obtained for the interception of all letters addressed to the appellant. The result was that the investigating authorities intercepted a letter, dated the 28th January, which was addressed to Porter and Co., and had been posted on the 29th January. This letter does not bear the signature of the writer, but evidence has been given to prove that it is in the handwriting of the accused. The letter has rightly been described by the Magistrate as a remarkable document and was in these terms:

28th January 1913.

Dear A,

There is no news to send. There was nothing from you this mail, and I only hope you did not send any more goods after the Borneo, but fear this would be too

good. From very patient enquiries from the highest sources, I find these people were given away by people they had quarrelled with, and so far as our were was concerned, there is no fault to find. The goods were passed by the appraisers and only examined in Messrs. Cox's godown on receipt of information. So you see, had you only remained out here, as I arranged, we might still be carrying on a good business, besides having already done 40 per cent, better. I find, when my plans are not carried out, disaster follows, but it is idle to go over this ground again As old clothes are finished with, the question now is, what new to try I suggest remnants of cloth and also alpacca. C. in paper packets can be put in these rolls after a time. But I rely chiefly on quinine, do to Messrs. Domeier and Co., 8, Harp Lane, London, B.C., and ask them cost price for 1 lb., tins for export. Don't say, for India, because they have an agent here, or if you do, say for Karachi, Pack about 40 in a case, and let me have one case to commence with, addressed to Messrs, Smith & Co., Chemists, Jubbulpur. Of course you must get another room somewhere and call yourself something new--how would Allen & Co., Shippers and Agents, do? You should have new stationery printed, I shall clear this myself, and, in future, all goods and store myself as well, and all will be well. About the third lot of quinine should be loaded. Unfortunately, quinine is very dear now, but we cannot help that. Some day we may make a profit on the quinine also; all you have to (do is?) to get some C. packed in a soldered tin, well papered inside; having slipped the quinine out of the outer paper, slip in the other tin and replace labels. A piece of clean wet blotting paper will remove all labels and enable you to do this quite easily. Better sell the press. Get the quinine packed in exactly similar boxes each time, nicely lined with paper, and don't fasten the top too tightly, but make all other sides very secure (with screws); this will cause examiners to open top lid only and the loaded tins will be at the bottom. I think this is a safe game. I expect our friend Mukherjee will get. three months and he is making an awful outcry about it. Why he gave his own name, I do not know. The silly ass talks of appeals, and will spend thousands instead of getting it over quickly. I am very sick at the accident, and fearfully disappointed but not surprised. How we shall ever get; the present stock out, I do not know. Perhaps I will bring some myself some day. I cannot think of any plan to get hold of already shipped stuff by transferring to Madras or recalling. But this you would have thought out a long time ago and

will do your best about. In a case like this, the least said the better, and it only remains to make fresh plans. I shall never have any confidantes in future--you and I only. I shall have a safe cache and sell myself according to the market; a little that way is better than a lot the old way. Unluckily, the quinine plan does not deal with bottles. Hoping you are well.

Sincerely,

P.S. Best clear out of Bartholomew Close at once. You might hear from Board of Trade otherwise, not to mention India Office. But they can only bluster.

4. The first question for determination is, whether this letter was written by the accused. We have on the record several letters admittedly written by the accused, including one written by him to the Collector of Customs. The Magistrate has noticed, the extraordinary general resemblance of handwriting in the case of the intercepted letter and the letter addressed to the Collector of Customs. There is also, the evidence of Mr. Hardless that two-thirds of the intercepted letter is in the handwriting of the accused, though the expert is not equally sure as to the remaining one-third. It is patent, however, that the whole of the intercepted letter was written by one person. We have farther the evidence of an assistant in the Mercantile Bank who is perfectly familiar with the handwriting of the accused as one of the customers of the Bank. We feel no doubt upon the whole evidence that the intercepted letter was written by the accused. The next question which arises is, whether the letter refers to the incident of the 23rd January 1913. Upon this point, there is really no room for controversy. The letter plainly refers to the seizure of the cocaine on s. s. Borneo, and there is no suggestion that there was any other consignment by the same steamer which was seized about the same time. There is also no doubt that the 'friend Mukherjee,' mentioned in the letter, is Kali Charan Mukherjee who was prosecuted in connection with the same incident and convicted. We have, consequently, the two facts that the letter was written by the accused and that the incident mentioned therein is the discovery and seizure of the consignment of cocaine concealed within old clothes on s. s. Borneo on the 23rd January, 1913. It is obvious that the letter is, in these circumstances, admissible against the accused, though it may have been intercepted. It is well

settled that a letter written by an accused person when self-disserving is prima facie evidence against him, if it relates distinctly to a relevant point; it is not necessary that it should be signed, it is enough if it is traced to the writer, and it is admissible though it may have been intercepted or surreptitiously detained and opened: *Rex v. Derrington* (1826) 2 C. & P. 418.

5. We have next to consider the effect of the contents of the letter. It has been argued by learned Counsel for the accused that the recitals in the letter do not show that the writer was the importer of the cocaine, and in this connection an elaborate argument has been addressed to us as to the relative rights of a consignor and a consignee under a.c.f. i. contract. The question raised, however interesting it may be, does not affect the matter before us. The point for determination is, whether the accused has imported cocaine in contravention of the Bengal Excise Act. The term 'import' as used in the statute has a very wide significance, for under Clause (12) of Section 2, the term 'import,' means 'to bring into Bengal.' The contents of the letter make it manifest that the accused imported the cocaine into Bengal or at least attempted to do so; it is immaterial for our present purpose to enquire whether he was the consignee and whether the title to the goods had vested in him under the terms of the contract between him and the exporters. It is worthy of note that the accused states in the letter that if the addressee had only remained in this country as suggested by him, 'they might still be carrying on a good business.' He then proceeds to discuss, with some elaboration, future plans of work and possible modes of importation of cocaine with the least chance of detection. It has also been argued that, in the most unfavourable view, the accused was the partner of Porter & Co., and consequently an exporter from England and not an importer into Bengal. The answer to this argument is that he may have been both exporter and importer, and it is plain, that whether he was an exporter or not, he was an importer. We are convinced that the accused did attempt to import cocaine in contravention of the law, though it may not be possible, on the evidence as it stands, to determine with precision the extent of the benefit that would accrue to him upon a successful venture. In this view, it is needless to consider in detail the other evidence on the record, which, in our opinion, materially confirms the conclusion at which we have arrived. But we may mention that there is satisfactory evidence to show that on the day following

the discovery of the cocaine by the Customs authorities, telegrams were sent by C. Barker, 71, Canning Street, to 'Portanigra. London and' Applebaum. Grodno' each containing a single word 'millet.' What this term means has not been proved, but it has been plausibly suggested on behalf of the prosecution that it was intended to signify 'discovered.' It has been proved that 71, Canning Street, is the business address of the accused, and in this Court as also in the Court below, a remarkable similarity was noticed between the admitted handwriting of the accused and the signature 'C. Barker' on the telegraph forms. It has also been proved that a man named Applebaum was a partner of the accused, while the term 'Portanigra' is the telegraphic address of Porter & Co., the exporters of the cocaine. These circumstances, though not conclusive by themselves, do undoubtedly tend to throw very important light on the case. We have further two other letters posted in England and addressed to the accused, which were intercepted in the Post Office. One of these is dated 24th January, 1913, and states 'your milla received.' This fits in precisely with the telegram sent on the morning of the 24th January 1913. The effect of this piece of evidence against the case for the defence was fully appreciated by the learned Counsel for the appellant, and he contended that the letter addressed to the accused was not admissible in evidence. But we are of opinion that this contention is not well founded and is opposed to the decision in *Queen v. Cooper*. (1875) 1 Q.B.D. 19 In that case, A was charged with obtaining and attempting to obtain money by false pretences from four persons by an advertisement offering employment to all who sent him one shilling in stamps. Letters from 281 other persons expressed to be in answer to the advertisement, and each enclosing twelve one-penny stamps were held admissible, although the letters had been intercepted at the Post Office and had never in fact reached A, and could consequently be deemed at best only constructively in his possession. In the case before us, the fact that a reply from Porter & Co., posted immediately after the telegram purporting to be sent by C. Barker and referring to the telegram, was addressed to Booth would be a relevant fact under Section 11 of the Evidence Act and cogent evidence to show that Booth was the sender of the telegram. Upon a consideration of the entire evidence on the record, we are fully satisfied, notwithstanding the very able argument addressed to us by Mr. Lahgford James, that the accused did attempt to import the

cocaine which was seized on s.s. 'Borneo' on the 23rd January, 1913. There is only one other point which requires consideration, namely, can the accused be held, as the Magistrate has done, to have imported cocaine, when as a matter of fact the cocaine was seized by the Customs authorities and was never delivered to him. In our opinion, upon the facts found he is guilty of an attempt to import rather than of actual importation. Though an article may be actually within the geographical limits of Bengal, we do not think it can be said to have been brought into Bengal, if, as happened here, it has been intercepted at the Custom House. Consequently, the accused is liable to be convicted, not of an offence under Section 46, but of an attempt to commit the offence of importation under Section 61 read with Section 46 of the Bengal Excise Act. We alter the conviction accordingly, but confirm the sentence and dismiss the appeal. The accused must surrender and serve out the remainder of the term of sentence as imposed by the Magistrate.

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