

Mukbul Ali Vs. Emperor

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Court : Kolkata

Decided On : Jul-30-1920

Reported in : 59Ind.Cas.133

Judge : N.R. Chatterjea and ;Cuming, JJ.

Appellant : Mukbul Ali

Respondent : Emperor

Judgement :

1. The petitioner in this case has been convicted under Section 9, Clause (c), of the Opium Act, 1878, and sentenced to rigorous imprisonment for two months and a fine of Rs. 100.

2. The petitioner is a boatman who plies Shampan in the river Karnafully in Chittagong. On the date of occurrence he plied his boat and took over one Abdul Rashid, a resident of Halishahar, who is a Lascar of the steamship Minhla to the said steamer which was to start the next morning for Rangoon at 9 A.M. The Excise Officers, who had received information that opium would be smuggled by the crew of the steamer, kept watch and at 2 o'clock in the night, the boat which was plied by the petitioner was seized by them. Thereupon, Abdul Rashid threw out a bundle into the khal, which was subsequently recovered and found to contain 4 seers of opium. Both Abdul Rashid and the petitioner were tried under Section 9, Clause (c), of the Opium Act. The former was sentenced to six months' rigorous

imprisonment with a fine of Rs. 300, and the latter to two months with a fine of Rs. 100.

3. The petitioner, admittedly, is a boatman and it is not suggested that the opium belonged to him. The information received by the Excise Officers was that the crew of the steamer would smuggle opium. Abdul Rashid was one of the crew. He carried opium in the boat and he has been rightly convicted. But we do not see how the petitioner, who is a boatman, can, in the circum-stances of the present case, be convicted under Section 9.

4. The learned Deputy Legal Remembrancer relies upon Section 10 of the Act which lays down that, in a prosecution under Section 9, it shall be presumed until the contrary is proved, that all opium for which an accused person is unable to account satisfactorily, is opium in respect of which he has committed an offense under this Act.

5. It is necessary to consider in what circum-stances a boatman may be said to be in pos-session of the opium found in his boat. In the present case, when the Excise Officers seized the boat, Abdul Rashid threw out a bundle into the khal. There is evidence of one of the Excise Officers that Abdul Rashid was sitting in the Shampan with a bundle and the petitioner, Mukbul Ali, was plying the Shampan. So, according to the evidence of the prosecution itself, the opium was with Abdul Rashid, though the latter was in the boat plied by the petitioner. In these circumstances, we are unable to hold that the petitioner had to give any satisfactory account when the evidence for the prosecution itself shows that it was Abdul Rashid who had the opium with him and who threw it into the river. The time of occurrence was 2 o'clock at night, but there is nothing to show that the boatman was aware that Abdul Rashid had with him 4 seers of opium.

6. The Court below placed much reliance upon the fact that Abdul Rashid was going to the steamer at 2 o'clock at night though the steamer was not going to start until 9 A.M. the next day; but that would not necessarily raise any suspicion in the boatman's mind, as people go to steamers at all times.

7. We think, having regard to all the circumstances, that the conviction of the petitioner and the sentence passed upon him must be set aside and the fine, if paid, will be refunded to him. He will be discharged from his bail-bond.

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