

iswar Chandra Singh Vs. Emperor

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Court : Kolkata

Decided On : Mar-23-1910

Reported in : 6Ind.Cas.173

Judge : Stephen and ;Carnduff, JJ.

Appellant : iswar Chandra Singh

Respondent : Emperor

Judgement :

1. The petitioner in this case was charged with having¹ sold opium in contravention of the provisions of the Indian Opium Act, and the rules framed thereunder. This is, of course, a charge of an offence under Section 9(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 Iswar Chandra is the servant of one Johiruddin Bepari who has a shop at Maha-jan's hat, which is some little distance from Chittagong, at which he is licensed under the Act to sell opium. On the 23rd March 1909, Iswar 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, within two days of the sale to him, to transport the opium to the premises at Mahajan's hat, where alone in the terms of the license it was lawful to sell the opium 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 it had been stolen, a statement which has been disbelieved

for very good reasons by both the Courts below. He, therefore, has failed to account for the opium he received. We have granted a 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 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 Opium Act, is sufficient for the conviction of the accused. 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 appellant sold the opium. And 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, penalizes 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 the accused 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 it cannot, therefore, be used to establish that fact.

4. The result is that the defective evidence of the sale in this case cannot be supplemented by the presumption in Section 10, and the conviction for illicit sale

is, therefore, bad. On the other hand, it is clear that on the facts proved the petitioner might have been convicted of unlawful transport of opium. We do not, therefore, consider it necessary to interfere in revision. The rule is, therefore, discharged.

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