

State Vs. Sangat Singh

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Court : Jammu and Kashmir

Decided On : Aug-16-1961

Reported in : 1962CriLJ36

Judge : J.N. Wazir, C.J. and; S. Murtaza Fazl Ali, J.

Appellant : State

Respondent : Sangat Singh

Judgement :

S. Murtaza Fazl Ali, J.

1. This is an appeal against an order passed by the Sub Judge, Magistrate 1st Class, Jammu acquitting the respondent on a charge under Section 48 of the Excise Act.

2. The prosecution case was that Hukam Chand Excise Inspector raided the house of the respondent Sangat Singh in bazar Babarian Jammu on 10.1.1958. On search of the house of the accused one locked dabba made of tin and one locked trunk were recovered. These articles were broken and one seer and five chattaks of contraband opium were recovered from both these articles. A challan was presented against the respondent under Section 48 of the Excise Act and the respondent was charged under that section. After both the parties had adduced their evidence, the defence took a preliminary point before the trial magistrate

which was to the effect that as the offence alleged was covered not by the Excise Act but by the Opium Act, therefore, the charge must fail. The magistrate accepted the contention of the accused and acquitted him.

3. It appears that previously possession of opium was punishable under the Excise Act but when the Opium Act (Act. No. 13 of 1857) was extended to the State of J. and K. the corresponding laws were repealed. During the course of the arguments in this Court, however, the Advocate General conceded that the stand taken by the prosecution in the court below was wrong, and in fact the Opium Act of 1857 which was extended to the State did not contain any provision making possession of the contraband opium punishable. The Advocate General, therefore, argued that in view of this fact Section 48(a) of the Excise Act which made possession of contraband opium punishable could not be said to have been repealed by Section 5 of the Opium Act of 1857, (sic) because this would not be a corresponding law within the meaning of Section 5 of the Opium Act. (sic) The position taken by the Advocate General has not been controverted by learned Counsel for the respondent.

We have gone through the Opium Act of 1857 and we find that under that Act it is only the cultivation of opium that has been made penal but not the possession of opium. It is, therefore, clear to us that as Section 5 of the Opium Act of 1857 (sic) did not in terms repeal Section 48(a) of the Excise Act so far as opium is concerned, Section 48(a) of the Excise Act continued to be good law and if the offence against the respondent was proved he could be convicted under Section 48 of the Excise Act.

It is also not disputed that opium is an intoxicating drug within the meaning of Section 48(a) of the Excise Act. It is, therefore, manifest that the learned magistrate took an erroneous view of law in acquitting the respondent under Section 48(a) of the Excise Act and in thinking that this Section had been repealed by the Opium Act of 1857.

4. We were, however, taken through the evidence by learned Counsel for the respondent to judge the merits of the case in order to determine whether we would be justified in reversing the acquittal on a technical ground. We now, therefore,

propose to deal with the merits of the case. The articles from which the contraband opium was recovered were found in a room in the upper storey of the house of the accused.

5. The defence was that the accused was not in exclusive possession of the house but he lived there along with his father, brother and other members of his family. Out of the witnesses examined by the prosecution Dina Nath is the only witness who states that he had not seen the father or the brother of the accused living in the house of the accused. The witness, however, admits in his cross-examination that he has been to the house of the accused only once and in these circumstances, the mere fact that he did not see the brother or the father of the accused, when he happened to go to the house of the accused does not show that those persons did not live in that house along with the accused. Apart from the evidence of Dina Nath there is no other witness who has proved the exclusive possession of the accused either in the house or in the room from which the articles were recovered.

On the other hand, the defence has produced a number of witnesses to prove that the accused was living in the house along with the other members of his family. For instance, D.W. Om Prakash who is a Record Keeper in the Jammu Municipal Council has stated that the accused lives in the house along with his father and wife. The witness also states that one Pritam Singh also used to live in that house. Similarly D.W. Hardutt who is a clerk in the Food Control Department proves from the register which he brought before the Court, that in the ration card which stands in the name of the respondent Sangat Singh he is shown to have seven members of the family, and this position prevailed right upto 1958-59.

It appears, therefore from the evidence of these two witnesses, who are official witnesses and not at all interested, that the accused was living in the house not only with his father, wife, but also a number of other members of his family. In this state of the evidence, therefore, it cannot be said that the prosecution has proved that the respondent was in exclusive possession of the house or the room from where the articles were recovered.

6. The Advocate General, however, laid great stress on the fact that when the accused was questioned regarding the key of one of the boxes, he stated that the key had been misplaced. This, however, does not show that the accused admitted the ownership of the boxes from which the opium was recovered. The accused never said that the boxes belonged to him. The key may have been with somebody else and it may have been misplaced. The accused merely repeated this fact before the raiding party. At any rate, before a conviction under Section 48(a) of the Excise Act can be recorded it must be proved affirmatively by the prosecution that the accused was found in exclusive and conscious possession of the contraband opium. As this proof is wholly lacking in this case, the charge under Section 48 of the Excise Act cannot be said to have been proved by the prosecution.

7. For the reasons given above, we are clearly of the opinion, that the acquittal of the respondent must be upheld on merits though not on the grounds given by the trial magistrate.

8. The result is that the appeal is dismissed and the acquittal of the respondent is confirmed. The articles recovered, however, would be forfeited to the State.

J.N. Wazir, C.J.

9. I agree.