

APPELLATE CRIMINAL.

Before Rankin C. J. and C. C. Ghose J.

THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL

1931
Dec. 22.

v.

LUDARCHANDRA DAS.*

Import—Import, what amounts to—Opium Act (I of 1878), s. 9 —Code of Criminal Procedure (Act V of 1898), ss. 178, 188.

The coming of opium into the province from outside the province for the accused on his account and with his consent constitutes the offence of importing opium under section 9 of the Opium Act, although delivery was to be taken by another. The offence would be equally complete, if when the opium crosses the border pursuant to his order, he is away somewhere else.

After the amendment of 1923, section 188 of the Code of Criminal Procedure overrides section 179 in any case to which section 188 applies.

CRIMINAL APPEAL.

The case for the prosecution was that the respondent, Ludarchandra Das, who was an Assamese and resident at Bokakhat, went to Coochbehar, arranging with his relative Khagendranath Saikia to send all letters and articles meant for the respondent's home to Khagendra's address. In May, two telegrams were sent by the respondent to Khagendra, intimating that silver bangles were being sent. This aroused the suspicion of the post master, who had been advised to look out for contraband opium sent from Coochbehar. Two days later, when a parcel addressed to Khagendranath by Ludarchandra Das arrived, Khagendra was asked to take open delivery in the presence of witnesses, which he refused. The parcel was then opened in the presence of respectable witnesses and was found to

*Govt. Appeal, No. 6 of 1931, against the order of R. N. Phukan, First Addl. Sessions Judge of Assam Valley Districts, dated March 10, 1931, reversing the order of J. Rasul, Magistrate of Golaghat, dated Jan. 27, 1931.

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contain 54 *tolâs* of opium. Ludar and Khagendra were sent up for trial under section 9 of the Opium Act. The case against Khagendra was withdrawn and he was examined as a witness. The trial court convicted Ludar, holding that he should be considered to be in possession during transit, as well as to have imported within British territory and thereby to have committed an offence under section 9 of the Opium Act. On appeal, the Additional Sessions Judge of Assam Valley Districts held that the offence of possessing and exporting was complete in Coochbehar as soon as the parcel was posted and, therefore, the respondent could not be tried in British India without a certificate of the Political Agent at Coochbehar under section 188 of the Code of Criminal Procedure. The Local Government preferred this appeal.

Khundkar (with him *Anilchandra Ray Chaudhuri*) for the appellant. The learned Judge was wrong in thinking that the accused had no possession of the parcel at Bokakhat. Originally the accused had possession and, when it was posted, the possession continued, because the post office was only an innocent agent. If Khagendra had taken delivery, then there would have been an effective change of possession. In any case, he imported into British India, and was therefore, guilty under section 9 of the Opium Act. He was an Assamese, had gone to Coochbehar, arranging with Khagendra to take delivery of articles for him. Therefore, when he posted the parcel, he was not only exporting but also importing for himself and when the parcel crossed the border his offence was complete. That offence was committed entirely in Assam and no certificate under section 188 of the Code of Criminal Procedure was necessary. *Munshi Lal v. Emperor* (1) and *Emperor v. Govind Ram* (2).

Maneendranath Banerji for the accused. The accused parted with his possession as soon as he posted it. He could not stop it in transit. That act was complete in Coochbehar and the accused could not be

(1) (1922) 20 All. L. J. 198.

(2) (1923) I. L. R. 46 All. 146.

tried without a certificate. He also merely exported and not imported at all because, at the time the parcel reached Bokakhat, the accused was far away. If anyone was guilty of importing it was Khagendra, not the accused. The two cases cited support the defence contention more than that of prosecution.

Khundkar, in reply.

RANKIN C. J. In this case, the accused Ludarchandra Das was convicted by the trial magistrate of an offence under clause (c) and also clause (e) of section 9 of the Opium Act (I of 1878). On appeal, the learned Additional Sessions Judge of the Assam Valley Districts has set aside both those convictions. The Government has brought this appeal against that order of acquittal made by the learned judge.

The facts of the present case, as proved by evidence, are particularly short and conclusive. The accused is an Assamese living in Assam. The part of Assam to which he belongs is a place called Bokakhat. In May, 1930, he sent some telegrams to a relation of his, named Khagendranath Saikia, who also lives in Bokakhat. These were sent from Coochbehar, but the original writing of the telegram has been produced and proved. The telegrams asked Khagendra not only to send him money, but intimated that certain things were being sent by the accused from Coochbehar to Khagendra in Bokakhat. One telegram ran "silver parcel is sent—am penniless—wire 150." On the 29th of May or soon after there arrived by post in the Bokakhat post office a parcel addressed to Khagendra. The Sub-Postmaster was suspicious and he made arrangements to request Khagendra to take open delivery in the presence of two witnesses of this parcel. Khagendra refused, whereupon the parcel was duly opened and it was found to contain opium.

There can be no doubt that the defence which was to the effect that the accused had sent the parcel from

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Coochbehar but that the parcel contained silver bangles and that opium had been substituted at a later stage broke down entirely. It was disbelieved and it need not trouble us. Khagendra, who gave evidence for the prosecution, said that the accused told him that he was going to Tezpur and that he would send letters and parcels meant for his (accused's) own home to the address of Khagendra, who was to hand them over to his (accused's) family. A letter (Ex. 5) was seized, as a matter of fact, from Khagendra's house and whether or not Khagendra is just as bad as this accused person, it is at any rate certain that the accused went to Coochbehar, having arranged with Khagendra to receive opium on his behalf and despatched the opium to Khagendra, in order that it might get into the accused's own control. In these circumstances and on these facts, the question is whether the accused has committed an offence under the Opium Act (I of 1878) and, if he has committed an offence, has he committed the offence in Coochbehar or in Assam.

For the present purpose, it will be as well to assume that we know nothing about the law prevailing in Coochbehar and we may even assume—though I dare say it is not in the least true—that people who send opium from Coochbehar to other States commit no offence against that State whatever. Clarifying our ideas in this way, we come to ask whether the accused has committed any offence under the Opium Act and we find this: By section 9 of the Act, any person who in contravention of the Act possesses opium or imports or exports opium is liable to be convicted of an offence. If we ask what is meant by “any person who imports opium,” there is a definition. Import means “to bring into “the territories administered by any Local Government “from sea or from foreign territory “or from a territory administered by “any other Local Government”; and, in like manner, export means “to take out of the territories

“administered by any Local Government to sea or to
 “any foreign territory or to any territory administered
 “by another Local Government.” It is clear enough,
 therefore, that the offence of importing opium is an
 offence constituted by bringing it into the territory in
 question. It does not matter where it was before,
 provided it was outside the province. The offence is
 in bringing it in and the word “bring” may be
 specially noticed as part of the definition. If the
 goods once come across the border of Assam into
 Assam, if they come for and on account of the accused
 with his consent—let alone by his procurement—the
 offence of importing into Assam is complete; it is not
 necessary to show that the accused did anything
 outside Assam. In this particular case, the accused
 went outside of Assam in Coochbehar and posted the
 parcel in effect to Bokakhat for himself which was
 exactly the same as if he had posted it to his own
 address and in his own name; but the offence of
 importing into Assam would be equally complete had
 the goods been despatched pursuant to the accused’s
 order by somebody in New York and it would be
 equally complete if when the goods crossed the border
 the accused had been taking a voyage on the high
 seas for the benefit of his health. The coming of the
 goods for the accused, on his account and with his
 consent in bringing them into Assam, is an offence of
 importing the goods. That this is the right view to
 take appears from cases which have been decided in
 other courts. The first decision is that of *Munshi Lal*
v. Emperor (1). Mr. Justice Walsh said this: “I
 “say nothing to discourage the view that a person who
 “exports from outside the United Provinces to a
 “warehouse inside the United Provinces of which he is
 “really the proprietor or temporary possessor, even
 “under a false name, is, in fact, committing an offence
 “under the Act of importing into the United
 “Provinces, although he is also the person who
 “exported from outside. It is perfectly possible for me.

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“to send an article for myself from the High Court at Allahabad to my chambers in London and, if I did so with a dutiable article without declaration, I should be guilty of importing into England”; and a Bench of the same High Court confirmed this view in the subsequent case of *Emperor v. Govind Ram* (1), the learned Judges pointing out that the person who imported must be a person who was intending or had the right to take delivery or desired to take delivery inside the area. I am quite satisfied on the evidence in the present case that the substance of the matter is that these goods were sent by the accused from Coochbehar to himself in Assam on his own account and the fact that they were to be taken delivery of by Khagendra under an arrangement with him has no importance at all. The position under the Opium Act is exactly the same as if he had kept a warehouse in Assam and he had sent the goods to that spot.

In these circumstances, I come to consider the view taken by the courts below. The trial magistrate found that the accused was guilty both of possession of this opium and also of importing it and he imposed a fine of Rs. 250 on each of the charges. As regards possession, I cannot say that it appears to me that that offence is at all made out having regard to the fact that the article was not, in fact, taken possession of, Khagendra having refused altogether to take possession of it after he became suspicious. The magistrate, however, found that the accused caused it to be imported from a foreign territory and he convicted him of that offence. When the case came before the learned Additional Sessions Judge, the learned judge was not satisfied that there was any proof of possession and, so far as that ruling is concerned, I am disposed to agree with him on the facts of this particular case. But his view on the other question was this, that what was shown was an offence of exporting opium

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from Coochbehar and he thought that while Khagendra might be placed on his trial for importing opium into Assam the accused had not imported opium into Assam but had only exported it from Coochbehar. Accordingly, the learned judge took the view that as the offence alleged against the accused was an offence committed in Coochbehar and, as there was no certificate from the Political Agent of Coochbehar, prosecution on that account did not lie. The magistrate had thought and said that the case was one under section 179 and not under section 188 of the Criminal Procedure Code. Of course, if it was under section 188, it would be no answer to say that the case was under section 179, because Mr. Banerji has shown that since the Code was amended, section 188 overrides section 179 in any case in which section 188 is applicable; that is to say, where the question is as to a native Indian subject committing an offence without and beyond the limits of British India or a British subject committing an offence in the territories of a Native Prince and so forth. It appears to me, however, that the learned judge was wrong. The offence of which the magistrate rightly convicted the accused was of importing the goods into Assam and that offence it appears to me is amply proved. That is not an offence committed in Coochbehar at all—from the nature of the offence. The offence is entirely committed within Assam, and section 188 of the Criminal Procedure Code has no application to the case. In my judgment, therefore, the Government appeal must be allowed, the acquittal must be set aside and the accused must be convicted of the offence of importing this opium into Assam. It is very unfortunate that, although this accused has been found to be trafficking in opium notwithstanding the great trouble the legislature in Assam has taken to stop the evils of opium smuggling, this accused person who has engaged himself in committing such an offence in order to get rich is punished only by a fine of Rs. 250. Trial magistrates

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dealing with these cases should have sufficient business sagacity to impose heavy penalties in cases where traffic is clearly brought home to the accused, because obviously a man trafficking in opium can well afford to pay a fine of Rs. 250 and still make a handsome profit. However, in the present case, the question of sentence is not one which at the moment we have any jurisdiction over. It will be sufficient to restore the judgment of the magistrate and to direct that on this count the penalty imposed by him shall stand, namely, a penalty of Rs. 250 fine, in default, to undergo six months' rigorous imprisonment.

GHOSE J. I agree.

Appeal allowed. Conviction and sentence restored.

A. C. R. C.