

1903

EMPEROR  
"
   
HUBAIN  
BAKHSH.

individual party. There is a further difficulty that nobody did anything but speak. Apparently those persons told lies, and their object in telling lies was to induce the police to desist in their pursuit—a very futile attempt. But I am in grave doubt whether section 216B of the Indian Penal Code includes in the definition of harbouring mere lies. The section runs thus:—"The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension." Now, reading the section in the light of general principles, the words at the end, "or assisting a person in any way to evade apprehension," must be meant to point some method *ejusdem generis* with those that have been specified above. In my opinion a bare lie does not fall within that category. I therefore set aside these convictions, and order that the above-mentioned eight men be at once discharged.

1903

January 24.

Before Mr. Justice Banerji.

EMPEROR v. GAJADHAR.\*

*Act No. I of 1878 (Opium Act), section 9—Possession of illicit opium—Custody of a locked box containing opium lawfully belonging to the owner of the box.*

A locked box containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium vendor, and it appeared that the opium vendor, instead of taking his box home with him at night, was in the habit of leaving it with his neighbour for safe custody. *Held*, that the custodian of the box could not be properly convicted of the offence of unlawful possession of opium, inasmuch as the possession of the opium was not his, but that of the legitimate owner.

ONE Gajadhar was convicted by a Magistrate of the first class of an offence under section 9 of Act No. I of 1878 (The Opium Act) and fined Rs. 30. Gajadhar applied in revision to the District Magistrate. The facts of the case as set forth in the District Magistrate's order were as follows:—"Applicant Gajadhar is a shop-keeper, a neighbour of Bhairon, a licensed opium seller. It appears from the evidence that as Bhairon did not sleep in his shop it was his custom when he went home

\* Criminal Reference No. 845 of 1902.

to put the opium, with his books and license, in a box and make it over to Gajadhar for safe custody during the night. Gajadhar used to keep the box for the night in his shop, and one evening it was found in his possession by the Police Superintendent, who, acting on information received, had obtained a search warrant. The box was always locked by Bhairon, who kept the key, and when found in Gajadhar's shop was so locked." The District Magistrate accordingly reported the case to the High Court for orders under section 438 of the Code of Criminal Procedure.

The Assistant Government Advocate (Mr. W. K. Porter) in support of the reference.

The following order was passed :—

BANERJI, J.—In my judgment the conviction of Gajadhar under section 9 of the Opium Act, No. I of 1878, was illegal. The facts as found are these :—Gajadhar is a shopkeeper and a neighbour of Bhairon, a licensed opium seller. Bhairon was not in the habit of sleeping in his shop. It was therefore his custom when he went home to put the opium with the books and license in a box, which he locked himself, and of which he kept the key, and to make it over to Gajadhar for safe custody during the night. Such custody certainly did not amount to possession by Gajadhar of the opium which was locked up in the box. He cannot, therefore, be held to be guilty of having opium in his possession in contravention of the Opium Act and the rules made under that Act. I set aside the conviction, and direct that the fine imposed on him, if paid, be refunded.

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