

I set aside the order passed as being an illegal order and direct that the case of Abdul Razzak and Abdul Shakur be returned to the Sessions Court of Cawnpore for trial by the learned Sessions Judge or by the Additional Sessions Judge of Cawnpore if there be such a Judge in existence at the present time.

1915

---

 EMPEROR  
 v.  
 ABDUL  
 RAZZAK.

*Order set aside.*

---

## REVISIONAL CRIMINAL.

---

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

EMPEROR v. ISMAIL KHAN. \*

1915

---

 February, 26.

*Act No. VI of 1898 (Indian Post Office Act), sections 19, 61 and 70—Offence—Cocaine—Transmission by post.*

*Held* that cocaine is not a substance which falls within the purview of section 19 of the Indian Post Office Act, 1898, and it is not an offence under that Act to transmit the same by post.

THIS was a reference made by the Sessions Judge of Kumaun, The facts of the case appear from the order of reference, which was as follows :—

„ Ismail Khan appellant has been convicted under section 60 (a) of the Excise Act and sentenced to a fine of Rs. 200, and also under section 61/70 of the Post Office Act and sentenced to a fine of Rs. 100. The facts are that the Post Master at Naini Tal received information that a parcel containing cocaine was coming by post addressed to accused. When it arrived on the 23rd of September, 1914, he sent for the police and they had it opened in the presence of the accused who is described as a “trader” or “merchant of Mulli Tal Bazaar.” The parcel contained six bottles of cocaine each containing  $\frac{1}{2}$  ounce and the fact is clearly proved.

“Accused said in his defence that he did not know the name of the man who sent the cocaine and that it was the act of an enemy. The (Sender) is one Buddhu of Rampur City. Accused belongs to Rampur City. He now admits knowing Buddhu. This is because his house was searched and several post cards from Buddhu were found there. He now suggests that two persons both named Bhup Ram may have addressed the parcel to him, but the hand-writing on the parcel is Buddhu Khan's. Besides this there are allusions in the correspondence:—‘The box is ready and is only waiting your arrival.’ ‘Card boards have been searched for among all the recoveries but they cannot be had thither, another search will be made if they can be found they will be sent.’ These cryptic phrases are not well explained by the accused. He says the card boards are used in shoe making, but this is denied by the prosecution and there is no evidence of it. He explains the ‘hai’ as a reply to a jocular allusion of his own.

---

\* Criminal Reference No. 73 of 1915.

1915

EMPEROR  
v.  
ISMAIL KHAN.

I agree with the Magistrate that the hand-writings shows that Buddha sent it and the previous acquaintance shows that accused ordered it. The sentence of fine only seems inadequate. Accused would not purchase so large a quantity for himself. He must have intended to make a trade of it. The Legislature has recently provided extra sentences for possession of cocaine and evidently intends to attempt the suppression of the trade by severe sentences. I therefore direct that the record be forwarded to the High Court with a recommendation that the sentence be enhanced. The point was not taken in appeal, but I have a doubt whether rule 93 (1) of the Post Office Guide has the force of law. It may embody rules made by the Governor General in Council under section 21 of the Post Office Act, but the prosecution cannot show me any publication in the Gazette. Accused's counsel was called on to show cause against an enhancement of sentence, but he had nothing to say."

Mr. *C. J. A. Hoskins*, for the applicant.

The Government Advocate (Mr. *A. E. Ryves*) for the Crown.

RICHARDS, C.J., and BANERJI, J.—Ismail Khan has been convicted under section 60A of the Excise Act and under section 61 read with section 70 of the Post Office Act. On conviction on the first charge he was fined Rs. 200 and on the second one Rs. 100. The learned Sessions Judge, to whom Ismail Khan appealed, has affirmed the convictions, but referred the matter to this Court for the purpose of having the sentences considered with a view to enhancement. Notice was duly served upon Ismail Khan, and he has been represented by Mr. *Hoskins* as counsel. Mr. *Hoskins* on his behalf urges, first, that both convictions were illegal, and that in any event the punishment was sufficient. In our opinion the court below was justified in finding that the accused had been guilty of an offence under section 60A of the Excise Act and that he was rightly convicted. So far as the conviction under section 61 read with section 70 of the Post Office Act is concerned we think that the conviction was not justified by law. Section 70 of the Post Office, Act VI of 1898, provides that any person "who abets the commission of any offence punishable under the Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence." We have now to see what offence Ismail Khan is alleged to have abetted. Section 61 is the only section referred to. That section provides that "whoever in contravention of the provisions of section 19 or section 20 sends or tenders or makes over in order to be sent by post any postal article or anything shall be punishable with imprisonment for a term which may extend to one year or with fine, or with both." We

1915

---

EMPEROR  
v.  
ISMAIL KHAN.

---

have now to see whether any person in contravention of the provisions of section 19 or section 20 sent any article by post. Section 19 is as follows :—Clause (1) “ Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office.” Clause (2) “ No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office.” It is quite clear that the provisions of section 20 have no bearing on the case. It seems to us that the provisions of section 19 really deal with the sending of articles or animals by post which will be likely to injure any person occupied in the execution of the Post Office work, or which might be likely to cause injury to articles in the course of transmission through the post. It does not seem to aim at the restriction of any trade. It is very hard to say that cocaine could be considered to be an “ explosive ” or a “ dangerous, filthy, noxious or deleterious substance ” within the meaning of the section. No doubt the abuse of cocaine may be followed by very serious consequences, but this, it seems to us, is not what the section was intended to provide against. It is said that rules have been made to prevent the sending of these articles by post. The sending of articles by post in contravention of the rules so made does not seem to be an offence under section 61, which only deals with the sending of articles in contravention of section 19 and section 20. We think, therefore, that the accused was wrongly convicted of an offence under the Post Office Act. We think, however, that the sentence under section 60A of the Excise Act was inadequate. We, therefore, set aside the conviction under section 70 read with section 61 of the Post Office Act and acquit the accused of that offence and remit the fine. We enhance the sentence under section 60A of the Excise Act to a sentence of three months simple imprisonment in addition to the fine of Rs. 200. The fine of Rs. 100, if paid, will be refunded.

*Order modified.*