

## APPEAL FROM REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

SITA RAM (CONVICT)—*Petitioner*

*versus*

THE CROWN—*Respondent*.

Criminal Revision No. 1674 of 1919.

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March 27.

*Opium Act, I of 1878, sections 3 and 9—Morphia—whether included in the term "opium."*

*Held*, that morphia is not included in the term "opium" as defined in the Opium Act, it being only one of the many ingredients of opium and not a preparation or admixture of opium or a drug prepared from the poppy.

Punjab Government Notification No. 954 of 16th October 1916, as amended by Notification No. 6583 C. and I. dated 27th March 1917 (page 78 of volume II of the Punjab Excise Manual), referred to.

*Revision from the order of J. K. M. Tapp, Esq., Sessions Judge, Ambala, dated the 17th June 1919, modifying that of Lala Ganesh Sahai, Magistrate, 1st class, Ambala, dated the 31st May 1919, convicting the petitioner.*

GOKAL CHAND, for Petitioner.

O'CONNOR (for Government Advocate), for Respondent.

The facts of the case are sufficiently given in the judgment of the Court.

MARTINEAU, J.—The petitioner is a physician who has been selling and transporting pills known as anti-opium pills, which are said to be a cure for the opium-eating habit. They contain 2·4 per cent. of morphia, and as the petitioner has no license to sell and transport morphia he has been prosecuted for infringing the rules under the Opium Act and convicted of offences under section 9, clauses (d) and (f) of that Act, and the conviction has been upheld by the Sessions Judge.

The question is whether the sale and transport of morphia without a license is an offence under the Opium Act, and this depends upon the question

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whether morphia is included in the definition of opium contained in section 3 of the Opium Act, which says that opium includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy. The Courts below have held that morphia is a preparation of opium, but I cannot agree with them. Morphia is prepared from opium, but there is a clear distinction between a preparation *from* opium and a preparation *of* opium. Morphia is only one of many ingredients of opium, and I am unable to see how it can be called a preparation of opium when it does not contain the various ingredients which opium contains. It would be more accurate to describe opium as a preparation of morphia than morphia as a preparation of opium.

That morphia is not included in the term "opium" as defined in the Opium Act was apparently recognized when the rules published in Punjab Government Notification No. 954, dated the 16th October 1916, as amended by Notification No. 6583 C. and I., dated the 27th March 1917 (page 78 of Volume II of the Punjab Excise Manual) were framed, for in rule 1 (f) the definition of the expression "Opium" given in the Act is amplified by the statement that that expression does not include morphia or its preparations. That rule must have been overlooked when proceedings were taken against the petitioner.

The fact of the petitioner having infringed the rules published in Notification No. 955, dated the 16th October 1916 (on page 101 of the Manual) regulating the sale and transport of morphia is immaterial if there is no penalty for their infringement.

I hold that morphia is not included in the term "Opium" as defined in the Opium Act, not being a preparation or admixture of opium or a drug prepared from the poppy.

I therefore accept this application, set aside the conviction and sentence, and acquit the petitioner. The fine, if paid, will be refunded.

*Revision accepted.*