REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

1922

Oct. 27.

Mussammat HAMIRI—*Petitioner*,

versus

THE CROWN - *Respondent.*

Criminal Revision No. 1044 of 1922.

Opium Act, I of 1878, *section 9 and rules—meaning of the words "preparation" and "admixture" of opium in* 37 (*d*) *of the rules under the Act.*

Held, that the word "preparation" in 37 (*d*) of the rules framed under the Opium Act designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used.

So also the word "admixture" refers only to a completed article and can only be applied after the mixing has been finished and not earlier. In the intermediate stages an offence has only been committed if the amount of opium used in the manufacture is more than that permitted by law.

Case reported by F. W. Skemp, Esquire, Sessions Judge, Karnal, with his No. 1325 *of* 12*th July* 1922.

The report of the Sessions Judge, Karnal, was as follows :—

The accused, on conviction by *Sardar* Gurpartab Singh, exercising the powers of a Magistrate of the 1st Class in the Karnal District, was sentenced, by order, dated 2nd May 1922, under section 9, Opium Act (of 1878), to a fine of Rs. 25, or in default two months' rigorous imprisonment. (The fine has been paid.)

The facts of this case are as follows :—

Mussammat Hamiri has been convicted under section 9 of the Opium Act (of 1878) and sentenced to Rs. 25 fine. She was found in possession of a solution of opium in water weighing 5 *tolas* and the Magistrate has found that this is a "preparation" of opium. As the weight exceeds the permitted limit of 2 *tolas* it amounts in his opinion to a breach of rule 37 (*d*)* of the rules framed under the Act.

* Page 39 of the Punjab Excise Manual.

1922

Mst. HAMIRI
v.
THE CROWN.

There is complete agreement as to the facts. *Mussammat* Hamiri was making a preparation of opium called *madhak* which is made by placing a small quantity of opium together with barley husks in water and causing the water to evaporate. The *madhak* when dried is smoked. The quantity of opium in the water was very small, according to *Mussammat* Hamiri as much as would go on a two anna bit, while the Magistrate says 4 or 5 *rattis*. Admittedly the amount of opium, of which Hamiri was found in possession was within the legal limit and equally the *madhak* when prepared would have also been within the legal limit. The conviction is based upon the fact that the weight of the solution exceeds the legal limit of a preparation of opium.

The proceedings are forwarded for revision on the following grounds :—

The Rule runs as follows: 37—Any person may without a license at any one time have in his possession—

(*d*) preparations or admixtures of pure opium, other than those used for smoking, in any quantity not exceeding in the aggregate two *tolas*.

The word "preparation" has two meanings, (1) abstract, the act of preparing, (2) concrete, the thing prepared. It is in the latter sense that the word is used in rule 37 (*d*). The substance prepared or preparation in this case is the *madhak* and the stage at which the mixture of opium, barley husks and water was seized is not a preparation, *i.e.*, not the finished article, but something in course of preparation, not yet prepared.

The word "admixtures" does not help because what was found was a solution. If the weight of the water be excluded, the weight of the admixture is well within the legal limit.

If it is not an offence to possess a certain quantity of opium, it is hard to see why it is an offence to possess the same quantity dissolved in water.

The Public Prosecutor referred by way of analogy to paragraph 139 of the Punjab Excise Manual, which says "It is possible that the decoctions made from two seers of poppy-heads would be more than

1922

Mst. HAMIRI
v.
THE CROWN.

three *tolas*. Thus a man would be guilty of illegal possession of *post* made from poppy-heads legally possessed. As, however, the *post* would probably be drunk as soon as it was made, the anomaly is in practice negligible

As to this the *post* is the completed preparation or decoction from the poppy-heads, and the point I am considering does not arise that the legal limit of possession is only exceeded at an intermediate stage when the opium cannot possibly be consumed.

I therefore recommend that the conviction be set aside.

In case it be held that the solution comes within the wording of the rule, I think the fine should be reduced to a nominal one. The Magistrate was of opinion that it was doubtful whether the term preparation or admixture would apply to the solution.

If he were doubtful, he should have given the accused the benefit of the doubt. He also said quite correctly that the case was merely a technical one. He ought not to have inflicted a substantial fine.

On this reference—

NEMO, for Petitioner.

DALIP SINGH, for the Government Advocate, for Respondent.

HARRISON J.—Mr. Dalip Singh has put both sides of the case before me and has discussed the various meanings which can be put on the words "preparation" and "admixture."

As to the word "preparation" I agree with the view taken by the learned Sessions Judge, and hold that here it designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used.

So also the word "admixture" in my opinion refers only to a completed article and can only be applied after the mixing has been finished, and not earlier. It is unnecessary to define the precise difference between an "admixture" and a "preparation."

There is a difference, but the articles designated by both words only come within the scope of their respective definitions when they have been prepared or mixed as the case may be. In the intermediate stages an offence has only been committed if the amount of opium used in the manufacture is more than that permitted by law. I, therefore, accept the application for revision and acquit *Mussammat* Hamiri. The fine will be refunded.

A. R.

Revision accepted.

PRIVY COUNCIL.

Before Viscount Cave, Lord Phillimore, Lord Justice Clark, Sir John Edge and Mr. Justice Duff.

1922

Nov. 9.

MUHAMMAD HAMID (PLAINTIFF) *Appellant,*

versus

MIAN MAHMUD AND OTHERS (DEFENDANTS)—

Respondents.

Privy Council Appeal No. 118 of 1921.

[Chief Court Civil Appeal No. 452 of 1913 (1)].

Muhammadan Law—Wakf—inference of dedication—Khankah—right of Sajjadanashin—*Vesting of Property.*

In an appeal raising questions as to the existence at a place in the Punjab of a *khankah*, a Muhammadan religious institution of the character described in the judgment, and as to the rights of the *sajjadanashin*, or superior, of the institution.

Held on the facts, (1) that the existence of the *khankah* was established; (2) that the appellant being the eldest son of the last *sajjadanashin*, and having been formally installed with the consent of the first respondent, was *sajjadanashin* and Manager; (3) that in addition to a mosque, which was admitted to be *wakf*, the shrine, with its *astanas* (courts) and surrounding *hujras* and gates, and the *astanas* of the mosque, were property attached to the *khankah*; a dedication as *wakf* (though not made expressly) being the proper inference from the circumstances: *Jowun Dass*

(1) Printed as 33 P. R. 1917.