

REVISIONAL CRIMINAL.*Before Mr. Justice Fforde.*

RAM TIKAYA, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No 635 of 1926.

Punjab Excise Act, I of 1914, section 61 (1) (a)—Sentences both for “importing” and “possessing”—whether legal—Interruption in transit by Customs Authorities—effect of.

Postal packets consigned from abroad to the accused and discovered on arrival in India to contain cocaine were delivered, on application at the Post Office, to the accused who was thereupon arrested.

Held, that the accused should not have been awarded separate sentences both for importing *and* for possessing under section 61 (1) (a) of the Excise Act.

Held further, that an article does not cease to be “imported” by the consignee merely because it has been interrupted in transit by the Custom officials acting under and in accordance with their statutory powers.

Bostan v. The Crown (1), distinguished.

Application for revision of the order of Khan Bahadur Sheikh Din Muhammad, Sessions Judge, Multan, dated the 30th March 1926, affirming that of F. A. Connor, Esquire, District Magistrate, Multan, dated the 22nd February 1926, convicting the petitioner.

TEK CHAND, for Petitioner.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

JUDGMENT.

FFORDE J.

FFORDE J.—The petitioners have been convicted under the provisions of section 61 (1) (a) of the Punjab

Excise Act, I of 1914, of unlawfully importing and possessing cocaine. The cocaine in question was despatched from Germany in two registered packets—one consigned to Multan City and the other to a branch Post Office at Mian Channun in the Multan District, to fictitious addresses. The packets, which came *viâ* Karachi, were opened at that port by the Custom officials, who after examining them and ascertaining the nature of the contents, sent them on to the Post Office for delivery to the consignees. On the petitioners calling at the Mian Channun Post Office for the packet in question it was handed over to them after certain enquiries had been made, and the petitioners were then arrested.

The main argument of the Counsel for the petitioners is that the conviction for importing cannot be sustained, inasmuch as the transit of the article in question was interrupted by the Custom officials and the subsequent act of forwarding was an act of the Custom officials for which the petitioners cannot be held responsible. Reliance is placed upon a decision of Sir Arthur Reid in *Boston v. The Crown* (1) where it was held that where a parcel containing opium was tendered by the accused for despatch to Burma but was seized by the Post Master and eventually forwarded to Burma by the postal authorities, such a parcel could not be deemed to be exported by the accused. In that case, however, the learned Judge held that the parcel was seized by the postal authorities before despatch, and that, consequently, it was not exported by the petitioner. Without expressing any view as to the correctness or otherwise of this decision I am of opinion that in the present case, the act of the Custom officials being authorised by the Cus-

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toms Act and the Regulations made thereunder, the article does not cease to be imported by the consignee merely because it was interrupted in transit by the Custom officials acting under and in accordance with their statutory powers. No doubt, if the Custom officials had in fact interrupted the transit of the package in a mode which is not authorised by Statute or the Regulations made thereunder, it might reasonably be argued that the petitioners could not be held to have imported it. As, however, it has not been suggested that the Custom authorities departed from or exceeded their powers, this question does not require determination.

I am satisfied that the petitioners have been rightly convicted of importing the cocaine in question contrary to law. They should not, however, have been awarded separate sentences under section 61 (1) (a) for both importing and possessing, and I accordingly set aside the sentence and fine on the count of possession. In other respects the petitions are rejected. The additional fine of Rs. 1,000, if realised shall be refunded in each case.

N. F. E.

Revision accepted in part.
