

APPELLATE CRIMINAL

Before D. Falshaw and I. D. Dua, JJ.

STATE,—Appellant

versus

SAT RAM DASS,—Respondent

Criminal Appeal No. 520 of 1958

1959

May, 13th

Opium Act (I of 1878)—Section 9—Punjab Opium Order 21.5—Possession of opium-extracted poppy-heads—Whether an offence—Interpretation of Statutes—Punctuations—How far to be considered—Acquittal—When to be set aside.

Held, that the opium-extracted poppy-heads can lawfully be possessed in any quantity.

I. D. Dua, J.

Held, that to avoid absurdity or incongruity even grammatical and ordinary sense of the words can in certain circumstances be avoided. The punctuation of a law, generally speaking, does not control or affect the intention of the legislature in its enactment. The intention is generally gathered from the context to which the words relate and the punctuations from no part of an Act. Punctuation does sometime lend assistance in the construction of sentences, but they are always subordinate to the context and court may legitimately punctuate or disregard existing punctuation or re-punctuate in order to give effect to the legislative intent. Even where a punctuation may be considered and given weight, for the purpose of discovering the intention of legislature, it can be done so only where a statute has been very carefully and accurately punctuated when enacted, and where all other means have proved futile.

Held, that in order to set aside an acquittal there must be very substantial and compelling reasons justifying reversal of the impugned order which should be shown to be clearly erroneous, because the presumption of innocence of the accused has been further reinforced by his acquittal. The High Court is, generally speaking, also slow in setting aside orders of acquittal in petty cases where no question of principle is involved.

State Appeal from the order of Shri Amarjit Chopra, Magistrate, Ist Class, Dhuri, dated 21st May, 1958, acquitting the respondent.

N. L. SALOOJA, for Appellant.

D. S. NEHRA, for Respondent.

JUDGMENT

DUA, J.—This is an appeal filed by the State against the judgment of a learned Magistrate Ist Class, Dhuri, acquitting Sat Ram Dass under section 9 of the Opium Act.

Dua, J.

The story of the prosecution is that on 17th of April, 1957, at about 6-10 p.m. the accused respondent was found in possession of 20 seers of poppy-heads near the way leading to village Kakarwal from railway line Dhuri. He was caught by the investigating officer and two witnesses Jagar Singh and Niranjan Singh, when the poppy-heads were said to have been tied in a cloth which was being carried by the accused in the form of a bundle placed on his head. A constable was sent to Dhuri town to fetch someone who would weigh the substance recovered. Bhagat Ram P.W. 2 came and found the weight of the commodity recovered to be 20 seers; it included both broken and unbroken poppy-heads. It is then alleged that about three months later this very bundle which had been sealed at the time of recovery, was again opened and poppy husk and poppy-heads, found in it, were separately weighed. The learned Magistrate after going through the entire evidence felt that the prosecution case was doubtful and had not been proved against the accused. The substance recovered consisted of *bhukki* or poppy husk and poppy heads. The learned Magistrate found that possession of poppy husk was not an offence under the law as possession of poppy capsules alone falls within the definition of opium which is punishable under the Opium Act, and that also only if it exceeds in

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quantity, the limit prescribed by law. The learned Magistrate also disagreed with the contention of the prosecution that *dodas* were the same thing as poppy capsules, but assuming that *dodas* were the same thing as poppy capsules, he was of the view that poppy capsules are also of two kinds, one from which the juice has been extracted and the other from which it has not been extracted, and each kind of poppy-heads has a different limit of quantity prescribed under the law, exceeding which the possession is declared illegal. In the present case, according to the trial Court, there is absolutely no evidence as to how much quantity of poppy-heads consisted of those from which juice had been extracted and how much from which it had not been extracted. The weight of the entire quantity of poppy-heads was merely given as 20 seers. The evidence on the record, as the learned Magistrate has observed; merely establishes that some *bhukki* and *dodas* were recovered from the accused and out of the latter some were broken and some unbroken. With these findings the Court below came to the conclusion that the substance recovered from the accused did not under the law fall within the definition of the word 'opium' and therefore there was no violation of section 9 of the Opium Act. The trial Court was also doubtful if the accused person could be present at the place from where he was alleged to have been arrested, because he was shown, in the register produced by the Station Master to be on duty.

On appeal. Mr. Saluja, counsel for the State has drawn our attention to the notification dated 28th of January, 1957 under section 5 of the Opium Act reproduced at pages 13 and 14 of the Lahore Law Times of 1957, Part V, according to which

possession of excise opium or impregnated poppy-heads up to a certain limit has been exempted from the operation of the Opium Act. It is also stated in this notification that possession of any kind of opium other than 'excise opium' and opium extracted poppy-heads in any quantity is prohibited unless specifically provided in the Punjab Opium Orders. Mr. Saluja has submitted that possession of every kind of opium except excise opium is prohibited and it was so prohibited on 17th of April, 1957 when the accused was caught. The counsel has also drawn our attention to the later amendment, dated 21st of March, 1958 in the Punjab Opium Orders by which the expression 'poppy-heads' has been defined to mean the capsules of the poppy (*Papaver Somni-ferum L.*) whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted therefrom and in order 5 of the Punjab Opium Orders also amendment has been made whereby possession of opium in any quantity by any person, except under and in accordance with the conditions of his ration card granted under the Punjab Opium (Restriction on Oral Consumption) Rules, 1956, or under an appropriate license or permit granted under the Opium Act or the Dangerous Drugs Act, has been prohibited. Under this amended order also up to the year 1960 any person can without a license have, at any one time, in his possession opium impregnated poppy-heads up to certain limits and possession of any kind of opium other than excise opium and opium-extracted poppy-heads whether or not crushed or powdered in any quantity unless otherwise specifically provided in the Punjab Opium Orders has been prohibited. The counsel has contended that since 1958, however, the provisions prohibiting the possession of poppy-heads have been made very stringent and under these provisions the

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case of the present type will clearly be punishable. But, for the conviction of the accused before us reliance has been placed by Mr. Saluja on *The State v. Babu Singh*, (1), decided by Falshaw and Dulat JJ., where on 3rd of July, 1957 Babu Singh was found to be in possession of $1\frac{3}{4}$ seers of poppy-heads from which the juice had been extracted. The learned Sessions Judge had, relying on *The State v. Sohan Lal* (2), held that the possession of such poppy-capsules as were found from Babu Singh was not an offence under the Opium Act. On appeal by the State, the Division Bench distinguishing *The State v. Sohan Lal* (2), allowed the appeal and convicted the accused Babu Singh on the ground that under the rules then in force, possession of poppy-heads from which the juice had not been extracted was not permissible beyond one *chhatak*. To me the language of the amended order 21.5 of the Punjab Opium Orders, 1957, dated 28th January 1957 does not appear to be quite clear and free from ambiguity. This order is in the following terms:—

“21.5. Any person may without a license at any one time during the financial year tabulated below, have in his possession excise opium impregnated poppy-heads up to the limit shown below each:—

Serial No.	Financial year	Limit of private possession of	
		Excise Opium	Opium Impregnated Poppy-Heads
		Total	Seers
1	1957-58	$\frac{1}{2}$	$\frac{1}{2}$
2	1958-59	$\frac{1}{4}$	$\frac{1}{4}$
3	1959-60	Nil	Nil

(1) Crl. A. 786 of 1957

(2) A.I.R. 1956 Punjab 159

Possession of any kind of opium other than 'excise opium' and opium extracted poppy-heads in any quantity is prohibited unless specifically provided under these Orders."

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It is argued that according to this provision, possession of opium extracted poppy-heads in any quantity is prohibited unless specifically provided under these Orders. It, however, seems to me to be anomalous that possession of opium impregnated poppy-heads should be lawful up to certain limits, but so far as opium extracted poppy-heads are concerned, their possession in any quantity should be unlawful. I would, in the circumstances, be inclined to construe this provision to mean that possession of opium extracted poppy-heads can lawfully be possessed in any quantity. To avoid absurdity or incongruity even grammatical and ordinary sense of the words can in certain circumstances be avoided; in the instant case we have merely to read the above order No. 21.5 as a whole and get at the intention of its authors by putting our own punctuations or by punctuating just one sentence in this order. Mr. Saluja wanted us to send for the original notification to see the punctuations. I am, however of the view that punctuations of a law, generally speaking; does not control or affect the intention of the legislature in its enactment. The intention is generally gathered from the context to which the words relate and it has indeed been observed in some decided cases that punctuations form no part of an Act (see *Lewis Pugh Evans Pugh v. Ashutosh Sen and others* (1), In England in the Rolls of Parliament the words are practically never punctuated. It is, of course, said that punctuation does sometime lend assistance in the construction of sentences, but they are always

(1) A.I.R. 1929 P.C. 69

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subordinate to the context and Court may legitimately punctuate, or disregard existing punctuation or re-punctuate in order to give effect to the legislative intent. Even where a punctuation may be considered and given weight, for the purposes of discovering the intention of legislature, it can do so only where a statute has been very carefully and accurately punctuated when enacted, and where all other means have proved futile. In any case, if the language of the order in question is capable of two constructions, I would unhesitatingly feel inclined to adopt the one which is in favour of the accused.

But this apart, this is not a fit case in which this Court should set aside the order of acquittal. As suggested by the counsel for the State the Opium Orders have now been suitably amended and made very much more stringent than what existed on 17th of April, 1957. In order to set aside an acquittal there must be very substantial and compelling reasons justifying reversal of the impugned order which should be shown to be clearly erroneous, because the presumption of innocence of the accused has been further reinforced by this acquittal. This Court is, generally speaking, also slow in setting aside orders of acquittal in petty cases where no question of principle is involved. On the facts and circumstances, therefore, I do not think this is a fit case in which we should set aside the order of acquittal and convict the accused-respondent.

For the reasons given above, this appeal fails and is hereby dismissed.

FALSHAW, J.—I agree.

B.R.T.