

REVISIONAL CRIMINAL

*Before Falshaw, J.*GUJAR SINGH,—*Convict-petitioner**versus*THE STATE,—*Respondent*

Criminal Revision No. 1428 of 1956.

Opium Act (V of 1878)—Section 3(i)—Punjab Excise Act (I of 1914)—Rules framed under—Opium—Definition of—Whether includes poppy heads from which opium has been extracted.

1957

March 29th

Held, that the only poppy heads which amount to opium within its definition are "opium impregnated" poppy heads. The possession of poppy heads from which the opium has already been extracted cannot possibly be intended to be unlawful.

The State v. Sohan Lal (1), referred to.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri T. C. Gupta, Sessions Judge, Amritsar dated the 13th December, 1956, affirming that of Shri Gurbaksh Singh, Magistrate 1st Class, Tarn Taran dated the 28th September, 1956, convicting the petitioner.

G. C. SHARMA, for Petitioner.

R. P. KHOSLA, for Advocate-General, for Respondent.

JUDGMENT

FALSHAW, J.—Gujar Singh, petitioner was convicted by a Magistrate at Tarn Taran under section 9 of the Opium Act and sentenced to three months' rigorous imprisonment, his appeal being dismissed by the Sessions Judge at Amritsar.

The case against the petitioner was that he was found in possession of five seers of what are described

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as opium extracted poppy heads at his house. He denied the alleged recovery, but this was held to be proved against him, and the argument put forward in revision is that under the law as it stands the possession of opium extracted poppy heads is not an offence. In the relevant rule framed under the Excise Act, it appears that the only opium poppy heads which amount to opium within the definition are "opium impregnated" poppy heads, and at the time when the present offence was committed the lawful possession of these poppy heads was limited to one seer.

My attention has been drawn to the decision of Kapur and Dulat, JJ., in *The State v. Sohan Lal* (1), in which it was held that the possession of husk of poppy heads called bhuki was no offence, although this case was decided on the basis that the possession of poppy heads in excess of two seers was unlawful. It seems that in fact the amendment of the rule which was introduced in 1955 was not brought to the notice of the learned Judges, but at the same time it is quite clear that if it had been, the case of the accused would have been even stronger, and the learned Judges dissented from a decision of the Nagpur High Court, in which it was held that the shells of poppy heads possessed in some measure the active properties of opium and could be used as an intoxicant and, therefore, came within the definition of "opium". The amendment of the rule by which only the possession of opium impregnated poppy heads is limited makes it quite clear that the possession of poppy heads from which the opium has already been extracted cannot possibly be intended to be unlawful. I accordingly accept the revision petition and set aside the conviction and the sentence of the petitioner whose bail bond will accordingly be cancelled.

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