

## LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

PREM NATH AND ANOTHER,—Appellants.

v.

OM PARKASH,—Respondent.

Letters Patent Appeal No. 5-D of 1952

*Arbitration—Award—Arbitrator not affording reasonable opportunity to the parties of being heard—Award, whether invalid and inoperative in the eyes of law—Rule stated.*

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*Held*, that although an arbitrator is allowed considerable latitude in the procedure adopted by him at the hearing it is essential that he should afford the parties a reasonable opportunity of being heard and of presenting their case. If he makes an award without complying with this essential requirement he does so at the peril of his award being declared invalid and inoperative in the eye of law.

*Appeal under Clause 10 of the Letters Patent from the judgment, dated 31st September, 1952, passed by the Hon'ble Mr. Justice Harnam Singh, in F.A.O. 55 of 1951, praying that the same may be set aside and the Judgment of the Trial Court upheld with costs throughout.*

*(Original suit No. 1173 of 1949, decided by Shri Mehar Singh Chaddah, Sub-Judge, 1st Class, Delhi on 30th March, 1951.)*

KHUSHI RAM, for Appellants

A. N. GROVER, for Respondent.

## JUDGMENT

BHANDARI, C. J. This appeal raises the question whether the learned Single Judge was justified in setting aside the award and directing that the matters in controversy between the parties should be adjudicated upon by a Court of law.

Bhandari, C.J.

Certain disputes which had arisen between Prem Nath, Dwarka Dass and Om Parkash, who were partners in a firm carrying on business in Delhi, were referred to the arbitration of Lala Karori Mal, father-in-law of Prem Nath. The arbitrator gave his award in

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due course and Prem Nath and Dwarka Dass in whose favour the award was given applied that this award be made a rule of the Court. Om Parkash challenged the validity of the award on various grounds but his objections were overruled by the trial Court and a decree was passed in accordance with the terms of the award. The learned Single Judge before whom the appeal came up for consideration held that the arbitrator had not maintained any records of the proceedings which took place on the 17th November, 1949, that the award was vitiated by the fact that both Prem Nath and Dwarka Das were closely related to the arbitrator and that the arbitrator did not afford the parties a reasonable opportunity of being heard before the award was given on the 25th November, 1949. He accordingly allowed the appeal and set aside the order of the trial Court. Prem Nath and Dwarka Das are dissatisfied with this order and have come to this Court in appeal under clause 10 of the Letters Patent.

It is a well-known proposition of law that although an arbitrator is allowed considerable latitude in the procedure adopted by him at the hearing it is essential that he should afford the parties a reasonable opportunity of being heard and of presenting their case. If he makes an award without complying with this essential requirement he does so at the peril of his award being declared invalid and inoperative in the eye of law.

The parties in the present case were not afforded a reasonable opportunity of being heard before the award was given and consequently the award could not be made the foundation of a decree. It is common ground that the case came up for consideration before the arbitrator on the 3rd October, 1949. On that day Dwarka Das was absent but Prem Nath appeared

in person and Om Parkash appeared with Mr. Daya Krishan Advocate. The arbitrator did not order *ex parte* proceedings against Dwarka Das even though he was absent, but he adjourned the case to the 30th October and later to the 17th November. The records of the proceedings which took place on the 17th November are not available for perusal as none were prepared. Two contradictory versions have been presented in regard to the proceedings which took place on this date. According to one version both Prem Nath and Dwarka Das were present before the arbitrator but Om Parkash was not and the arbitrator was accordingly compelled to direct that *ex parte* proceedings be taken against Om Parkash. *Ex parte* proceedings were taken against him and an *ex parte* award was given on the 25th November, 1949. According to the other version neither Prem Nath nor Dwarka Das appeared before the arbitrator on the 17th November but Om Parkash appeared along with his counsel, Mr. Ram Kishan D.W. 1. The arbitrator told them that as neither Prem Nath nor Dwarka Das was present that day the case would be taken up for consideration on another date intimation whereof would be sent to the parties concerned in due course. The learned Single Judge came to the conclusion, that although the arbitrator had informed the parties that the case would be taken up on another date intimation of which would be sent to the parties in due course, he proceeded to make an *ex parte* award in the absence of the parties and without affording them an opportunity of being heard. This is a finding of fact with which I should be extremely reluctant to disagree in a Letters Patent Appeal.

Assuming for the sake of argument that Om Parkash did not appear before the arbitrator on the 17th November, and that the version given by him to the contrary is not worthy of belief, even then it seems

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to me that it was his duty to inform Om Parkash that he intended to proceed with the reference at a specified time and place whether Om Parkash attended or not. If this notice had been issued and if he had failed to secure the attendance of Om Parkash, then and then alone was the arbitrator at liberty to proceed *ex parte* against him (Russell on Arbitration 15th Edition, page 144).

For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal with costs.

Falshaw, J.

FALSHAW, J. I agree.

APPELLATE CRIMINAL  
Before Kapur and Dulat, JJ.  
THE STATE,—Appellant.

v.

SOHAN LAL,— Respondent.

Criminal Appeal No. 287 of 1955

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*Opium Act (I of 1878)—Sections 3(1) and 9(a)—Punjab Excise Rules, Rules 21.1(b) and 21.5 in Chapter 21—Poppy husk (Bhuki)—Whether covered by the definition of the word opium in section 3(i) or by the Rules 21.1(b) and 21.5.*

*Held*, that there is no rule which deals with poppy husk (bhuki) which was found from the possession of the accused. It is not covered by the definition of the word "opium" as given in the Act and no offence can be held to be committed. 'Capsule' as given in Webster's Dictionary means "any closed vessel containing spores or seeds". Poppy husk has not been shown to be a capsule and the word 'capsule' is not synonymous with husk or bhuki.

*Jaggiwan Pitambar Gujrathi v. Emperor (1)*, dissented from.

*State appeal against the order of Shri I. M. Lall, Sessions Judge, Ambala, dated the 15th December, 1954, reversing that of Shri H. K. Jain, Resident Magistrate, Kharar, dated the 3rd September, 1954.*

K. S. CHAWLA, Assistant Advocate-General, for Appellant.

B. S. CHAWLA, for Respondent.

(1) A.I.R. 1936 Nag. 240