

**(1975) 08 P&H CK 0024**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Revision No. 414 of 1974**

|                           |    |            |
|---------------------------|----|------------|
| Jaswant Singh and another | Vs | APPELLANT  |
| The State of Haryana      |    | RESPONDENT |

**Date of Decision :** 27-08-1975

**Acts Referred:**

Opium Act, 1878 — Section 9

**Citation :** (1975) 08 P&H CK 0024

**Hon'ble Judges :** A.D. Koshal, J

**Bench :** Single Bench

**Advocate :** Surjit Kaur, for the Appellant; Shushila Sharma for Advocate General (Haryana), for the Respondent

**Final Decision :** Dismissed

## Judgement

A.D. Koshal, J.—Four persons namely Jaswant Singh, Zora Singh, Ravinder Kumar and Harbans Singh were jointly tried by Shri N.K. Jain, Judicial Magistrate 1st Class, Narnaul, of an offence u/s 9 of the Opium Act. It was alleged that the first three of them were found in illicit possession of 166 kilograms and 500 grams of opium which was recovered from truck No. MPO 2727 in which they were travelling on the 25th of October, 1971 and that they had thus committed an offence punishable under Clause (a) of Section 9 of the Opium Act. The said opium was alleged to have been exported by the fourth accused who was, therefore, charged under Clause (c) of that section. The charge failed as against Harbans Singh accused for utter lack of evidence. The other three accused, however, were found guilty of possession of 166 kilograms and 500 grams of opium and were convicted as charged, each one of them being sentenced to rigorous imprisonment for two years and a fine of Rs. 2,000/-. It was directed that in default of payment of fine by any of them, he would undergo further rigorous imprisonment for a period of six months. The opium was confiscated to the State and a notice was issued to Harbans Singh accused as to why the truck should also not be so confiscated.

Against their conviction and the sentences imposed upon them, Jaswant Singh, Zora Singh and Ravinder Kumar instituted an appeal in the Court of Session at Narnaul and the same was dismissed by Shri S.D. Tyagi, Additional Sessions Judge, Narnaul, on the 11th of January 1974 and it is his judgment which is sought to be revised by Jaswant Singh and Zora Singh convicts in Criminal Revision No. 414 of 1974 and by Ravinder Kumar convict in Criminal Revision No. 81 of 19(sic)4.

2. The prosecution case may be stated thus. On the 25th October, 1971, Hari Singh, Deputy Superintendent of Police, Nuh (P.W. 4) was present at Police Station Ateli when he received secret information at 9-55 A.M. that a truck bearing number MPO 2727 would be coming from the Rajasthan side with a large quantity of opium. He entered the information in first information report Exhibit P.A. and sent a telegraphic message to District Inspector of Police Chanan Singh (P.W. 3) to reach Kanti Barrier at which the two police officers met later on. Other police personnel were also present there and so were Madan Lal (P.W. 6) who carries on the business of tea-vending at the Barrier, and Chowkidar Bishan Singh (P.W. 7) who hails from Village Kanti which is situated at a distance only of about a half furlong from the Barrier.

At about 12 noon truck No. MPO 2727 was seen coming from the Rajasthan side and was stopped by the Deputy Superintendent of Police, Jaswant Singh. Petitioner was at the wheel and alongside were seated the other two Petitioners. At the bidding of Hari Singh (P.W. 4) Assistant Sub-Inspector Sis Ram (P.W. 8) and a few constables boarded the truck and conducted a search which yielded six bags containing 35 small bags having the contraband inside them. The total weight of opium was found to be 166 kilograms and 500 grams. Samples from the bulk were separated and sealed and were found by the Chemical Examiner to be opium.

3. Eleven witnesses were examined at the trial in support of the prosecution case. They included six who testified to the opium having been recovered from truck No. MPO 2727 at the Barrier in their presence and also to the fact that at the time Jaswant Singh Petitioner was at the wheel while the other two Petitioners were sitting by his side.

4. When examined in pursuance of the provisions of Section 342 of the Code of Criminal Procedure, 1898, all the three Petitioners admitted that they were seated inside truck No. MPO 2727 when it was being taken from the Rajasthan side by Jaswant Singh Petitioner as its driver, but denied all the allegations made by the prosecution against them including the one that the truck was intercepted and a search thereof yielded the opium in question.

5. As already stated, Madan Lal (P.W. 6) carries on the business of tea-vending at the Kanti Barrier. It is also proved that his father is a police constable. Bishan Singh chowkidar (P.W. 7) admitted to having appeared as a witness for the prosecution in quite a few cases instituted by the police. On the basis of these

facts it was urged before the Courts below that none of the witnesses to the recovery should be given any credence as Madan Lal (P.W. 6) and Bishan Singh chowkidar (P.W. 7) were interested in the police whereas Chanan Singh (PW3), Deputy Superintendent of Police Hari Singh (P.W. 4) and Sis Ram (P.W. 8) were themselves police officers and were unreliable not only because they were interested in the success of the raid but also for the reason that they failed to join with them disinterested persons for the purpose of witnessing the raid in spite of the fact that they had ample time to do so. The contention did not weigh with either the trial Court or the learned Additional Sessions Judge, both of whom found the recovery to be proved and, coupling it with the report of the Chemical Examiner to the effect that the samples made available to and analysed by him were opium, held that the entire bulk of 166 kilograms and 500 grams was opium recovered from the truck in which the three accused were found travelling when it was intercepted at the Kanti Barrier. Conscious possession of the contraband was attributed to all the three Petitioners by the Courts below mainly for the reason that they were alleged by some of the witnesses to the recovery to have made an attempt to run away immediately after the truck was intercepted and came to a stand still.

It was in these premises that the Courts below convicted and sentenced the Petitioner as aforesaid.

6. After hearing Learned Counsel for the parties, I have no reason to doubt the genuineness of the recovery or the fact that the entire bulk of the contraband was opium and nothing else. It is true that Madan Lal (P.W. 6) and Bishan Singh chowkidar (P.W. 7) were more or less under the influence of the police but then it will be too much to expect disinterested persons to become members of nakabandi parties which have to wait for hours on and before the quarry is ensnared. Members of such parties have to give up their normal pursuits for the time being and to forego their earnings for the period of nakabandi. Quite naturally, therefore, members of the public do not normally look with favour upon being such members. Be that as it may I have no reason to disbelieve any of the police officers themselves, interested as they were in the success of the nakabandi, on the point of the recovery. None of them had any motive whatsoever to involve any of the Petitioners in a false case under the Opium Act. That the three Petitioners were travelling in the truck which was being taken by Jaswant Singh Petitioner from the Rajasthan side is admitted on all hands. When the three police officers and the other two witnesses of the recovery allege, therefore, that six bags containing 35 others which had inside them 1661/2 kilograms of the contraband were found in the truck, their words appear fully credible in the absence of any evidence to indicate that they are not telling the truth. I have thus no hesitation in rejecting the contention (which was made only half-heartedly by Learned Counsel for the Petitioners) that the recovery of the contraband was liable to be rejected as false.

7. The contention on which Learned Counsel for the Petitioners laid emphasis was

was that none of them had been shown to be in conscious possession of the opium said to have been recovered from the truck. It was brought to my notice in this connection that the bags in which the opium was contained were lying underneath numerous other packages, that the truck did not belong to any of its occupants but was owned by Harbans Singh accused and that there was nothing to show that any of the Petitioners had knowledge of the presence of the opium in any of the bundles being transported. It is true that the prosecution has not produced any evidence of knowledge on the part of any of the Petitioners that the six bags above mentioned contained opium but then in the circumstances of the case the Court will presume that such knowledge was there. In this connection the provisions of Section 10 of the Opium Act may be reproduced here with advantage. They are:

10. In prosecutions u/s 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Interpreting this section their Lordships observed in *Inder Sain Vs. State of Punjab*,

That section seems to proceed on the assumption, if it is proved that the accused had something to do with opium, then the burden of proof that he has not committed an offence will be upon the accused. In other words, when once it is proved in a prosecution u/s 9 of the Act that the accused was in physical custody of opium, it is for the accused to prove satisfactorily that he has not committed an offence by showing that he was not knowingly in possession of opium. It would, therefore, appear that the prosecution need only show that the accused was directly concerned in dealing with opium. If the prosecution shows that the accused had physical custody of opium, then, unless the accused proves by preponderance of probability that he was not in conscious possession of the article the presumption u/s 10 would arise. We do not think that the language of Section 10 would warrant the proposition that for the presumption mentioned in the section to arise it is necessary for the prosecution to establish conscious possession.

In our opinion Section 10 would become otiose if it were held that prosecution must prove conscious possession before it can resort to the presumption envisaged in the section. As we said Section 10 proceeds on the assumption that a person who is in any way concerned with opium or has dealt with it in any manner, must be presumed to have committed an offence u/s 9 of the Act, unless the person can satisfactorily prove by preponderance of probability either that he was not knowingly in possession or other circumstances which will exonerate him. The burden to account will arise only when the accused is in some manner found to be concerned with opium or has otherwise dealt with it.

And again -

In the last analysis, therefore, it is only necessary for the prosecution to

establish that the accused has some direct relationship with the article or has otherwise dealt with it. If the prosecution proves detention of the article or physical custody of it, then the burden of proving that the accused was not knowingly in possession of the article is upon him. The practical difficulty of the prosecution to prove something within the exclusive knowledge of the accused must have made the legislature think that if the onus is placed on the prosecution, the object of the Act would be frustrated.

This clear-cut enunciation of the meaning to be attached to the provisions of the section is an insurmountable hurdle in the way of the Petitioners. The opium was recovered from the truck and all the Petitioners were travelling in the truck. A direct connection between them and the opium has thus been established. And if that be so, by virtue of the presumption arising u/s 10 the onus shifts to them to show the existence of circumstances that they had not committed the offence with which they were charged or, in other words, that they had no knowledge of the six bags above mentioned containing opium. No such circumstance is available in the present case. In fact, all the Petitioners have denied the recovery itself which, of course, has been established beyond doubt.

8. In view of the above discussion I hold the conviction of all the Petitioners to be well based. On the question of sentence, I am of the opinion that in view of the huge quantity of opium involved, the Courts below have already taken a lenient view of the matter and that no reduction in the sentence is, therefore, called for. Accordingly both the petitions fail and are dismissed. The Petitioners shall surrender to their bail bonds.