

Sarju Vs. the State

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Court : Allahabad

Decided On : Jun-13-1963

Reported in : AIR1964All6; 1964CriLJ23

Judge : R.N. Sharma, J.

Acts : Arms Act, 1878 - Sections 19; [General Clauses Act, 1897](#) - Sections 6 and 24; [Arms \(Amendment\) Act, 1959](#) - Sections 1(3) and 46(2)

Appeal No. : Criminal Revn. No. 273 of 1962

Appellant : Sarju

Respondent : The State

Advocate for Def. : Shanker Sahai and ;K.N. Kapoor, Adv.

Advocate for Pet/Ap. : H.K. Ghose, Adv.

Disposition : Revision dismissed

Judgement :

R.N. Sharma, J.

1. This is a revision against the order of the learned Sessions Judge, Sitapur dismissing the appeal of Sarju against his conviction under Section 19 (f) of the Indian Arms Act (Act 11 of 1878) and sentence of rigorous imprisonment for 13

months.

2. The only point argued before me in this case is that because the Indian Arms Act, 11 of 1878' was repealed by the Arms Act, 54 of 1959, the whole proceedings under Section 19(f) of the repealed Act instituted on 2nd May, 1962 ending in the conviction of the applicant on 25th August, 1962 are void and cannot be cured by any provision of law. It has been contended that the provisions of Section 19(f) were not saved by the saving Section 46(2) of the Arms Act, 54 of 1959 or Sections 6 and 24 of the General Clauses Act. Another objection was raised in paragraph 4 of the application for revision that sanction under Section 39 of the Arms Act, 54 of 1959 was not obtained before the institution of the case against the applicant and so the prosecution was bad for want of sanction. However, the learned counsel conceded before me that sanction for the prosecution had seen duly obtained and he did not press this ground.

3. I have heard the learned counsel for the applicant at length but am unable to agree with his contention. An unlicensed country-made pistol was recovered from the possession of the applicant when he was arrested on 1st March, 1952. A challan was submitted by the police against him on 2nd May, 1962 and after trial, he was convicted on 25th August, 1962. As already stated the prosecution was under Section 19(f) of the Indian Arms Act, 11 of 1878. The new Act called the Arms Act, 1959, received the assent of the President on 23rd December, 1959 and it was laid down in Section 1(3) of this Act that it would come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The contention of the learned counsel for the applicant is that because the Act was not expressed to come into operation on a particular day, it should be deemed to have come into operation on the date it received the assent of the President i.e. on 23rd December, 1959, long before the prosecution of the applicant. This contention is not correct. Sub-section (1) of Section 5 of the General Clauses Act, 10 of 1897, lays down that where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent, in the case of an Act of Parliament, of the President. Thus an Act of Parliament shall come into operation on the day on which it receives the assent only where it is not expressed to come

into operation on a particular day. In the case of the Arms Act, 54 of 1959, it was definitely expressed to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The 'particular day' for the purposes of this Act was the date as the Central Government was to appoint. The legislature had delegated the power of appointing the date to the Central Government and so the date which might in future be appointed by the Central Government, was to be the 'particular day' on which the Act was expressed to come into operation. Sub-section (1) of Section 5 of the General Clauses Act does not contemplate that a particular day should necessarily be appointed by the legislature. The particular day can also be the day which the Central Government may be authorised to appoint. By a notification No. GSR 992 dated 13th July, 1962, the Central Government appointed 1st October, 1962 as the date on which the new Arms Act, 54 of 1959, was to come into force. For the purposes of Sub-section (1) of Section 5 of the [General Clauses Act, 1897](#), this new Act was sufficiently expressed to come into operation on this date and it shall be deemed to have come into operation on 1st October 1962 and not on the date on which it received the assent of the President.

4. Then, the mere fact that the Indian Arms Act of 1878 was subsequently repealed by the new Arms Act of 1959 does not take away the effect of the conviction of the applicant which had already been recorded on 25th August, 1962. Section 6 of the General Clauses Act, 10 of 1897, lays down:

'6. Where this Act, or any Central Act, repeals any enactment hitherto made or hereafter to be made, then, unless a 'different intention appears the repeal shall not-

(a)

(b)

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed: or

(e)

The applicant had already incurred a penalty or punishment in respect of an offence punishable under Section 19(f) of the Indian Arms Act, 11 of 1878, before the new Act came into force and the repeal of the old Act could not affect such penalty or punishment. The conviction of the applicant was otherwise valid and it does not become void by reason of the repeal. The punishment awarded to the applicant could not become ineffective by the repeal of the Act under which it was imposed.

5. I, therefore, find no force in this revision and it is accordingly dismissed. The applicant shall surrender to his bail and serve out the sentence.

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