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Queen-empress Vs. Samuel Luke

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1900)ILR22All323

Judge : Burkitt, J.

Appellant : Queen-empress

Respondent : Samuel Luke

Judgement :

Burkitt, J.

1. This is an application in revision against the conviction and sentence passed on the applicant by a Sub-Divisional Magistrate in the Philibhit district under Section 19(f) of the Indian Arms Act, No. XI of 1878. The Magistrate found that the petitioner had fire-arms in his possession in contravention of the prohibition contained in Section 14 of the Act.

2. The learned Government Pleader very properly admits that the conviction and sentence cannot be supported. The plea raised by the learned Counsel who appeared for the applicant is that 'as a volunteer petitioner is exempted from the operation of the Section under which he has been convicted.' That plea, in my opinion, is a good plea, and must be allowed.

3. The Magistrate who convicted the petitioner admits that the petitioner is a volunteer. It would therefore, prima facie, appear that under the provisions of the Government Notification No. 458, dated the 18th March 1898, the petitioner did not commit any offence in having fire-arms in his possession. The Magistrate, however, has an easy way of getting over that difficulty. He contemptuously brushes it aside by holding that though the petitioner is a volunteer, and as such 'is exempt from the operation of the Arms Act, 1878,' * * * * * * * 'he is exempt only for the purposes of volunteering. He is not exempt from possessing fowling pieces, which he did (sic) in spite of his fowling piece having been confiscated by the District Magistrate.' The Magistrate further found that in spite of the previous warning the applicant 'has again possessed himself of the fowling pieces,' and 'uses these fowling pieces in shooting wild animals.' (The former case mentioned by the Magistrate is one in which in another district the applicant was convicted of a similar offence under the Arms Act. In that case he was let off with a warning, and his gun was confiscated. The Sessions Judge on appeal held that he ought to have been fined under Section 19(e) of the Arms Act, 1878). The Magistrate goes on to add that the petitioner 'should have obtained a license under the Arms Act, 1878, if he wanted fowling pieces for the protection of his cultivation. As a volunteer he is not entitled to keep fowling pieces, nor is he entitled as such to use them for the purpose of protecting his cultivation.' Acting on his view the Magistrate inflicted a fine on the applicant and directed his guns to be confiscated.

4. In my opinion the Magistrate has adopted an absurdly erroneous view of the law. I have no hesitation in holding that, being admittedly a volunteer, the applicant is (to use the language of the Magistrate) entitled to keep fowling pieces, and to use them for the purpose of protecting his cultivation. I know of no authority for the interpretation put by the Magistrate on the words 'all volunteers' in the Notification mentioned above, nor has the Magistrate cited any. Those words, read in their ordinary grammatical sense, exempt 'all volunteers' from the operation of all the prohibitions and directions contained in Sections 13, 14, 15, and 16 of the Arms Act, with certain exceptions not in point in this case. The Magistrate does not accept that view. He holds that the applicant 'is exempt only for purposes of volunteering.' It is difficult to say what meaning the Magistrate intended to be put on those words. Most probably they mean that applicant was entitled to the benefit

of the exemption only when attending volunteer parades and when in possession of the rifle which had been entrusted to his care an a volunteer. If this restricted meaning is to be attached to the words 'all volunteers,' a similar restriction must necessarily be applied to all the other classes of person exempted in similar language. The result of this would be absurd in many cases: to take one case among many, it would render it illegal for native commissioned officers of Her Majesty's native army to possess or use, unless they had obtained license under the Act, any arms other than those supplied to them by Government for military purposes.

5. I cannot believe that it was intended that such a narrow and restricted interpretation should be placed on the Notification. On the contrary, I believe that the exemption of 'all volunteers' from the operation of the prohibitions and directions contained in certain Sections of the Arms Act, 1878, was granted with a view to encourage volunteering among that class of the public who otherwise would be subject to those prohibitions and directions. But as interpreted by the Magistrate in this case the Notification is inoperative as far as volunteers of that class are concerned. It would leave them in exactly the same position as before under the Arms Act, and it would still be necessary for volunteers of that class, who, like the applicant, desire to possess and use fire-arms, to take out licenses under the Act. It follows, as a necessary consequence of this interpretation, that it is only by virtue of the exemption in the Government Notification mentioned above that volunteers, like the applicant, and officers and soldiers of the native army, can legally possess and use the arms supplied to them for volunteering and military purposes. In my opinion that interpretation is wrong and would defeat the object aimed at by the Notification. I hold that the applicant was not bound to take out a license for the fire-arms he possessed, and was therefore improperly convicted. Accordingly, setting aside the conviction and sentence, I direct that the fine, if paid, be refunded and that the confiscated guns be restored to the applicant.

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