

Rikha Singh Vs. Rex

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Court : Allahabad

Decided On : Jun-03-1949

Reported in : AIR1949All625; 1949CriLJ982

Judge : Seth, J.

Appellant : Rikha Singh

Respondent : Rex

Judgement :

ORDER

Seth, J.

1. A number of arms were recovered from the possession of the applicant in village Hasanpur Kalan in the distriot of Meerut. He was, therefore, prosecuted for an offence under Section 19(f), Arms Act and convicted and sentenced to two years' rigorous imprisonment. His conviction and the sentence awarded to him was maintained by the Court of appeal. He has now come up in revision to this Court.

2. The findings of fact recorded by the two Courts below have not been questioned before me as they could not be questioned in a revision, this application has been argued upon a ground which was not put forward in any one of the two Courts below.

3. It is contended that sanction of the District Magistrate was needed for the prosecution of the applicant and that the entire trial is illegal for want of such sanction. Reliance is placed upon Section 29, Arms Act in support of this contention. Section 29 reads as follows:

Where an offence, punishable under Section 19 (1), has been committed within three months from the date on which this Act comes into force in any province, district or place to which Section 32, Clause (2) of Act XXXI of 1860, applies at such date or where such an offence has been committed in any part of British India not being such a district, province, or place, no proceedings shall be instituted against any person in respect of the offence without the previous sanction of the Magistrate of the District, or, in a Presidency town, of the Commissioner of Police,

It would appear from this section that no sanction is needed for the institution of any proceeding in respect of an offence under Section 19, Clause (f), if it is committed in a place to which Clause (2), Section 32 of Act xxxi [31] of 1860 applied if the offence was committed three months after the coming into force of the Indian Arms Act (xi of 1878). If therefore the district of Meerut is a place to which Section 32, Clause (2) of Act. XXXI [31] of 1860 applied, no sanction was needed in this case, for the offence was obviously committed more than three months after the coming into operation of the Indian Arms Act.

4. It is therefore necessary to refer to Section 32, cl. (2) of Act xxxi [31] of 1860 which runs as follows:

In every such province, district, or place as well as in any province, district or place in which an order for a general search for arms has been issued and is still in operation under Act XXVIII [28] of 1857, it shall not be lawful for any person to have in his possession any arms of the description mentioned in Section 6 of this Act. or any percussion caps, sulphur, gunpowder, or other ammunition without a license.

5. It is manifest from this sub-section, read with Section 29, Arms Act. that no sanction for the institution of proceedings under Section 19 (f), Arms Act is needed

where an offence has been committed within an area in respect of which an order for general search for arms had been made under Act XXVIII [28] of 1857. There is a notification dated 21st December 1858, published in the Government Gazette, North Western Provinces, Vol. 1, No. 45, dated 28th December 1868. The notification is No. 5336 and is dated 21st December 1858. It reads as follows:

The Right Honourable the Governor General has been pleased to extend the provisions of Rs. 1, 2 and 5 of Act XXVIII [28] of 1857, to the North Western Provinces of the Bengal Presidency.

His Lordship having resolved on disarming such parts of those provinces as lie to the North of the Rivers Jumna and Ganges, has further been pleased, under Section 24, Act XXVIII [28] of 1857, to authorise a general search and seizure of arms by the Magistrates and Collectors within the tract above specified. The Magistrate and Collector may delegate the same authority to any officer of this establishment of rank not lower than a Jaraadar.

6. The decision of the point raised by the learned counsel thus depends upon the construction of this notification, in particular of the expression 'north of the rivers Jumna and Ganges' occurring therein. If the district of Meerut may be regarded to be comprised in the area north of the rivers Ganges and Jumna of the North Western Provinces of the Bengal Presidency in the year 1858, there can be no doubt that an order for search of arms was made in respect of that district under B. 24, Act XXVIII [28] of 1857. The district of Meerut is undoubtedly to the north of the river Jumna, The contention of the learned Counsel is that the notification should be interpreted to apply only to those areas which were to the north of the rivers Jumna and Ganges be to, and cannot be interpreted to apply to those areas which were north to only one of these two rivers. Every such tract of land which is to the north of be to these rivers lies to the north of the river Ganges. If the interpretation suggested by the learned Counsel were to be accepted, there would be no sense in mentioning the river Jumna also as a southern boundary of the tract to which the notification was to be applied. It would have been sufficient to have indicated the tract by stating 'such parts of those provinces as lie to the north of the river Ganges.' By way of reply to this reasoning, the learned Counsel has urged that if

the notification was intended to apply to every tract of the province lying to the north of the river' Jumna, there was no necessity of mentioning the river Ganges also, if it was not intended that the tract of land should lie to the north of be to the rivers. Prima facie, the argument would seem to be plausible, but some reasonable interpretation has to be put upon the notification. A consideration of the course followed by the two rivers, Jumna and Gangea would disclose that after the confluence of the river Jumna with the river Ganges at Allahabad there is left a tract of land forming part of the province which lies to the north of the river Ganges only. The districts of Meerut and Saharanpur are to the north of river Jumna and the river Ganges flows towards the east of these districts. It appears to me that the tract of land indicated by this notification was the tract of land to the north of the river Jumna up to its confluence with the river Ganges and thereafter the land to the north of the river Ganges. *King Emperor v. Abdul Oafur* : AIR1929 All68 , is a case in which the question, whether sanction of the District Magistrate required under Section 29 in respect of an offence under Section 19 (f), Arms Act. committed in the district of Saharanpur was needed, was considered. The precise language of the notification was not discussed in that case, but a Division Bench of this Court held that no sanction under s, SO was needed for prosecution of offences under Section 19 (f), Arms Act in the Saharanpur district. The position of the Meerut district in no way differs from the position of the Saharanpur district so far as the applicability of the notification quoted above is concerned, I am, therefore, of opinion that no sanction under Section 29 was needed for prosecution in the present case.

7. It was submitted in the end by the learned Counsel for the applicant that the sentence awarded in this case is too severe. The applicant is a young man of 21 years of age. I consider that a sentence of one year's rigorous imprisonment would meet the ends of justice. While, therefore, maintaining the conviction of the applicant I allow this application in revision to this extent only that I reduce the sentence of imprisonment awarded to him- from a period of two years' rigorous imprisonment to a period of one year's rigorous imprisonment. The applicant is on bail. He must surrender to his bail and serve out the rest of his sentence. His bail bonds are cancelled.

