

**Emperor Vs. Abdul Ghafur**

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**SooperKanoon Citation :** [sooperkanoon.com/467781](http://sooperkanoon.com/467781)

**Court :** Allahabad

**Decided On :** Jul-10-1928

**Reported in :** AIR1929All68

**Appellant :** Emperor

**Respondent :** Abdul Ghafur

**Judgement :**

1. This is an appeal by the Local Government against an order of the Additional Sessions Judge of Saharanpur acquitting Abdul Ghafur of an offence punishable under Section 19(f) of the Arms Act 11 of 1878.

2. The accused was a tailor working at Rurki. One Mohan Lal, a supply agent, informed the Cantonment Magistrate of Rurki on the 9th January 1924 that the accused had a gun and revolver without license. The Cantonment Magistrate sent the information to the Deputy Superintendent of Police who ordered the local police to take up the matter. The second officer of the Rurki police station, Sub-Inspector Chittar Mal recovered a revolver with 16 cartridges from the possession of the accused and rifle, which the accused admits belongs to him, from the Military Stores at Rurki. The accused denied the charge and said that the revolver and rifle were not recovered from him and that the case was got up against him by Mohan Lal. The Magistrate who tried the case and the learned Sessions Judge found that the accused was in possession of the arms and ammunition without a license, but the learned Judge acquitted the accused on the ground that under

Section 29 of the Arms Act no sanction had been obtained from the District Magistrate previous to the prosecution and that the Magistrate had failed to record the grounds of his belief when ordering the investigation as required by Section 25 of the Arms Act. The third illegality which the learned Judge held to have been committed was that there was nothing on the record to show that the Sub-Inspector who conducted the search was legally empowered to do so under the provisions of the Arms Act. We have come to the conclusion that there is no force in any of the points taken by the learned Sessions Judge. In the first place, we are of opinion that no sanction was necessary for starting the prosecution in this case. Our grounds for coming to this conclusion are the same as those of Daniels, J., in the case of Amir Ahmad v. Emperor : AIR1926 All143 .

3. Even if sanction was necessary we are of opinion that sanction was duly obtained in this case and the fact that the witnesses were resummoned and the trial commenced de novo complied with the provisions of the law. The learned Judge is in error in thinking that because the case had once already been before the Court it was a continuity of the same proceedings.

4. Under Section 30 of the Arms Act a search is to be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and in the United Provinces an officer in charge of a police station is empowered to conduct a search. We are of opinion that it was for the defence to make out that Sub-Inspector Chhitar Mal who was the second officer and had conducted the search was not in charge of the police station at the date of the search and not for the prosecution to prove that fact. We must presume that an officer who takes action under a particular section must be deemed to have full powers until the contrary is proved. Even if the Sub-Inspector Chhitar Mal was not in charge of the police station we think that in view of the provisions of Section 56, Criminal P.C. he could have been authorized by the officer in charge of the police station to lawfully conduct the search. We are therefore of opinion that not only the letter of the law but the spirit of the law have been fully obeyed in this case. Whether the search was legal or illegal, we are of opinion that arms having been founded in the possession of the accused, no question of the legality of the search or otherwise can be raised, by him: See Emperor v. Kutroo : AIR1925

5. We, therefore, set aside the acquittal of Abdul Ghafur and convict him under Section 19(f) of the Arms Act. We cannot accept the statement of Mohan Lal that Abdul Ghafur had these arms and was threatening people to shoot at them. The evidence is that he used the gun for the purpose of sport. Under these circumstances we think the ends of justice will be met by inflicting a light sentence. He is 25 years of age and has already been in jail under a warrant of this Court for about a month. Under the circumstances we sentence him to one month's rigorous imprisonment. It is unnecessary to inflict a sentence of fine. We maintain the order of the learned Judge about the confiscation of the rifle, revolver and cartridges.