

Kifayatullah Khan Vs. Emperor

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Court : Allahabad

Decided On : Aug-30-1930

Reported in : AIR1931All17

Appellant : Kifayatullah Khan

Respondent : Emperor

Judgement :

ORDER

King, J.

1. One Kifayatullah Khan was Convicted under Section 19 (f), Arms Act of 1878, for being in possession of 340 patakhas without a licence. The learned Sessions Judge recommends that the conviction be quashed.

2. The patakhas are ' 1 1/2 to 2' in diameter. They contain a very small quantity of chlorate of potassium mixed with sulphide of arsenic, together with small pieces of kankar, wrapped, and rolled in several layers of paper so as to form a small ball. When thrown on the ground they explode with a report. These patakhas or crackers are customarily used by children at the time of shabarat just as crackers of a rather different kind are . generally associated with Christmas festivities. Hitherto no licence has been required even for their sale, much less for their possession, probably because they are regarded as mere playthings. They are said to be sold at the rate of 8 for one pice.

3. It seems *prima facie* astonishing that such insignificant crackers could be regarded as 'ammunition' within the meaning of the Arms Act. 'Ammunition' is defined in Section 4 of the Act as including

all articles specially designed for torpedo service and submarine mining, rockets, guncotton, dynamite, litho fracteur and other explosive or fulminating material.

4. The Magistrate argues that patakhas are 'explosives', as they do explode on percussion, and therefore they must be 'ammunition'. I do not agree to this view. The general words 'other explosive or fulminating material' must, according to the well recognized rule of *eiusdem generis* or '*noscitur a sociis*', be interpreted in the light of the foregoing examples of explosives. According to this rule of interpretation I hold that the definition includes only such explosive or fulminating material as could be used for any military purpose or in particular for fire-arms or torpedos or war-rockets, or for mining or blasting. As patakhas are quite useless for such purposes I hold that they are not 'ammunition' within the meaning of the Act.

5. It is worth noting that it has been held by a Bench of the Madras High Court so long ago as 1882 in *Queen v. Suppi* [1882] 5 Mad. 159 that the manufacture or possession of fireworks without a license is not prohibited by Section 5, Arms Act. The 'rockets' referred to in the definition mean war-rockets. This latter point is supported by the Arms Rules of 1924. Wherever rockets are referred to they are expressly called 'war-rockets' e. g., Rules 5, 23 and 30. This ruling still holds good so far as I am aware. It was distinguished in *Queen-Empress v. Khasim Sahib* [1885] 8 Mad. 202, but not dissented from. Licenses for the manufacture, possession or sale of fire-works are granted under the Explosives Act of 1884 and not under the Arms Act. I am clearly of opinion that the conviction under Section 19 (f), Arms Act, cannot be sustained.

6. The Magistrate suggests that if the conviction under Section 19 (f), Arms Act, be set aside, the accused might be convicted under Rule 138 (6), Explosives Rules, of 1914. It is however at least open to doubt whether the accused is guilty even of any offence under the Explosives Act or the rules made thereunder. It was held by a Bench of the Punjab Chief Court in *Emperor v. Bansidhar* [1910] 8 P.R. 1910 Cr.

that no license for the sale of patakhas is required under the Explosives Act, as patakhas are not fire-works. I do not wish to express any opinion on this point as it clearly would not be fair in revision to alter a conviction under the Arms Act to one under the Explosives Act, unless a conviction under the latter Act were obviously correct and unless it were certain that the accused had not been prejudiced by being charged under the Arms Act.

7. I accept the reference, set aside the conviction and sentence, and order that the fine if paid be refunded.

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