

Muhammad Hasan Vs. Emperor

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Court : Allahabad

Decided On : Aug-18-1924

Reported in : 85Ind.Cas.159

Judge : Mukerji, J.

Appellant : Muhammad Hasan

Respondent : Emperor

Judgement :

Mukerji, J.

1. This is an application in revision by one Muhammad Hasan who has been convicted by a learned Magistrate under Section 19(f) of the Arms Act 1878. He was sentenced to a fine of Rs. 200 by the Magistrate. On appeal the learned Sessions Judge upheld the conviction but reduced the sentence to a fine of Rs. 75.

2. In appeal it is contended first that the facts found do not make out a case under the section under which the applicant has been convicted and secondly that the sentence is still too severe.

3. The facts found are these: The applicant's father (sic) license for a gun. The license which has been issued to him does not mention that he is entitled to hand

over his gun to any retainer. The applicant took out the gun of his father for the purpose of shooting birds and it appears that he shot at least one. While thus possessing the gun near a pond, he was found out by an officer of the Police and the Tahsildar. It has been urged for the applicant that his possession was a temporary one and was one which was not contemplated by law. Two cases have been cited before me, viz., the case of Prabhat Chandra Chowdhry v. Emperor 35 C. 219 : 12 C.W.N. 272 : 7 C.L.J. 242 : 7 Cr.L.J. 112 : 3 M.L.T. 190 and Queen Empress v. Tota Ram 16 A. 276 : A.W.N. (1894) 82 : 8 Ind. Dec. (N.s.) 179. In the first case the gentleman who was entitled to the use of the gun was away from the country and the gun was in the house. At the actual moment of its use a servant of the owner had in his hands while a mad dog had entered the house, the person charged with the offence in the aforesaid case took the gun from the servant's hand and fired it in order to kill the mad dog. He was convicted of the offence under Section 19(f) of the Arms Act. It is clear that the use of the gun for just a minute or two was held to be no such possession as was contemplated by law. On the facts, that case is clearly distinguishable from the case before me. In the case reported as Queen Empress v. Tola Ram 16 A. 276 : A.W.N. (1894) 82 : 8 Ind. Dec. (N.s.) 179, a servant was taking his master's gun to a gunsmith for repairs. It was held that the possession was not such as was contemplated by law. In this case the applicant had deliberately possessed himself of the gun and had it under his control for the time being. There is no doubt that his possession was temporary, but it depended on the will of the applicant as to how long he would possess the gun. It may be that he intended to be out for shooting with the gun for the whole day. In my opinion there is no escaping from the clear words of the section, viz., 'Has in his possession or under his control an arm...in contravention of the provisions....' I think on the whole that the conviction is right.

4. As regards the sentence, it does appear to me that it is still excessive. The spirit of the law was not contravened but certainly the letter has been contravened. I reduce the sentence to a fine of Rs. 25 only.