

Kartar Chand Vs. the State

Kartar Chand Vs. the State

SooperKanoon Citation : sooperkanoon.com/615266

Court : Punjab and Haryana

Decided On : Feb-20-1961

Reported in : AIR1962P& H559

Judge : R.P. Khosla, J.

Acts : Indian Arms Act, 1878 - Sections 29; [Constitution of India](#) - Article 14

Appeal No. : Criminal Revn. No. 199-D of 1960

Appellant : Kartar Chand

Respondent : The State

Judgement :

ORDER

(1) This is a reference from Additional Sessions Judge, Delhi. The order dated 29-2-1960 of the Court of the first instance directing continuance of the trial for the offence under Section 19(f). Arms Act, without the alleged sanction of the District Magistrate was impugned.

(2) On 26-6-1959 the petitioner was found being in possession of a loaded English pistol without licence or permit. In the course of the trial it was objected that the prosecution could not proceed without the prior requisite sanction of the District Magistrate as contemplated by the provisions of Section 29 of the Indian Arms Act, 1878 (XI of 1878). The learned trial Magistrate by his aforesaid order repelled the

objection. The said order dated 29-2-1960 was called in question in revision before the learned Additional Sessions Judge who, while relying on a Bench decision in *Mehar Chand v. State*, AIR 1959 All 660, recommended to this Court that the prosecution of the petitioner being illegal for want of sanction of the District Magistrate be quashed.

(3) I heard counsel for the parties at length and examined the relevant material and provisions of the Arms Act bearing on the question involved.

(4) Section 29 of the Arms Act which reads:

'Where an offence punishable under Section 19, clause (f), has been committed within three months from the date on which this Act comes into force in any State, 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 India not being such a district, State or place, no proceedings shall be instituted, against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town, of the Commissioner of Police.'

is undoubtedly ultra vires because it offends the provisions of Article 14 of the [Constitution of India](#). It tends to create distinction on territorial basis.

(5) It is not, however, understood, as to how could Section 29 be made divisible into two parts, first part incorporating the exception and thus ultra vires; and the 2nd part, containing necessity of sanction, general, and accordingly ultra vires. The said ratio adopted in AIR 1959 All 660 was in fact not adhered to later by the Allahabad High Court. In Full Bench decision *Bhai Singh v. The State*, AIR 1960 All 369 (FB), Section 29 was held invalid in entirety. It was observed

'The unconstitutional distinction between persons charged with an offence under S. 19, Clause (f) committed north of the Ganga and persons charged with the same offence committed south of that river was made by Section 29 itself. The section divides offence into two classes according to where they are committed; that division is ex hypothesi unjustified; and there is no valid ground for holding one class to be good in law and the other bad. It is the classification itself which is

bad. Hence the whole of the section must be held to be invalid.'

(6) Following the dictum in AIR 1960 All 369 (FB), I would unhesitatingly hold that the entire provisions of Section 29 of the Arms Act were repugnant and must be struck down. It Section 29 is unconstitutional and rendered ineffective and inoperative in extenso, sanction by the District Magistrate for prosecution under Section 19(f) is no longer required. In this view the reference must stand declined. The revision petition is dismissed and I would affirm the order in question dated 29-2-1960 of the trial Magistrate

(7) Reference rejected

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com