

**State Vs. Ramkishan**

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**Court :** Rajasthan

**Decided On :** Sep-02-1955

**Reported in :** AIR1956Raj24

**Judge :** Wanchoo, C.J. and; Dave, J.

**Acts :** Arms Act, 1878 - Sections 19

**Appeal No. :** Criminal Appeal No. 104 of 1953

**Appellant :** State

**Respondent :** Ramkishan

**Advocate for Def. :** Ratanlal, Adv.

**Advocate for Pet/Ap. :** L.N. Chhangani, Government Adv.

**Disposition :** Appeal allowed

**Judgement :**

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Ramkishan of an offence under Section 19 (f) of the Arms Act.

2. The facts of the case are not in dispute. The accused is the proprietor of Grand Hotel, Jodhpur. One Mahendra Singh came and stayed at, the Hotel. When he was leaving, he was short of money and could not pay the bill that he had run up at the Hotel. Consequently Mahendra Singh left his pistol with the accused, and executed a document Ex. P3 by which he pledged this pistol as a security for the sum of Rs. 300/7/- which he owed to the grand Hotel.

He agreed that the money would be paid within a fortnight together with interest. It was also agreed that if the money was not paid within the, time-limit, the Hotel would have the right to recover the amount by selling the pistol. On 23-3-1952, the pistol was recovered from the possession of the accused by the police on the basis, of some information received from Bombay. Thereafter, the accused was prosecuted under Section 19 (f) of the Arms Act. He admitted these facts, but his case was that he was not guilty within the meaning of that section.

3. Section 19 (f) of the Arms Act provides, for punishment of any person who has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of Section 14 or Section 15, which provide for licence.

The contention of the applicant is that though he was, in fact possession of the pistol, in law that did not amount to possession within the meaning of Section 19 (f). Reliance in this connection has been placed on a number of authorities.

4. The first of those cases is -- 'Queen Empress v. Tota Ram,' 16 All 276 (A). In that case, a servant Nathu was carrying a gun of his master in order to have it repaired, and it was held that, in those circumstances, the servant was not guilty.

5. In -- 'Emperor v. Harpal Rai', 24 All 454 (B), a gun has been given by the licensee to a friend for purposes of repairs. This friend's father was taking the gun to a repairer for that. purpose when he was caught. It was held that in those circumstances there was no offence under Section 19 (f). Learned counsel relies on an observation in this case, which is in these words:

'The essential of the offence is the going armed, that is, carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises.'

We must say with respect to the learned Judge a that all that Section 19 (f) requires is possession or control of the arm, and there is no requirement in that section that the possession should be with the intention of using the weapon when the necessity or opportunity arises.

We may add however that we agree with the view taken in these cases, namely that where a servant or a friend is in temporary possession, of a licensee's gun for a limited purpose say repairs, he would not be guilty under Section 19 (f) of 'the Arms Act for being in possession or control of the gun because in such circumstances the possession in law will be that of the licensee.

6. The next case on which reliance is placed is -- 'Charu Chandra v. Emperor,' AIR 1914 Cal 175 (1) (C). That was also a case of a servant taking a gun on behalf of his master to a Magistrate for purposes of renewing the license. It was held that in those circumstances no offence under Section 19 (f) of the Arms Act was committed.

In this case also certain observations were made to the effect that the petitioner v/as not possessing the gun with the object of using it. With all respect we may say that the use to which the gun may or may not be put is entirely immaterial for purposes of an offence under Section 19 (f). The gun in this case was being carried by a servant, and in law the possession in the circumstances was that of the master.

7. Lastly reference was made to -- 'A. Malcolm v. Emperor,' AIR 1933 - Cal 218 (D). In,that case, it was said with respect to one of the accused Malcolm that the weapon was made over to him merely for the purposes of negotiating a sale, and therefore such possession, was not unlawful inasmuch as he was not in possession of the weapon, with the intention of using it as a weapon.

We must again say with respect that the purpose to which the weapon is to be put is not material when determining whether an offence under 6. 19 (f) of the Arms

Act has been committed. In this case also it can be said that Malcolm's possession was only the possession of the licensee, though this appears to be a border-line case.

8. None of the cases, therefore, on which learned counsel for the accused relies is a case of pledge. In the case before us the accused took the gun from Mahendra Singh as a security for the sum of Rs. 300/- and odd which Mahendra Singh owned to him. He also took a document from Mahendra Singh to that effect, and in that document it is mentioned that the pistol was being pledged with the accused, and that the accused would be entitled to sell it.

Whether the accused could legally sell the pistol in face of the provisions of the Arms Act is a different matter altogether. What we have to see is whether, in such circumstances, the possession was that of the accused or still of the licensee. We are quite clear that in these circumstances where the weapon is pledged in order to secure some money due from the licensee, the possession passes from the licensee to the pledgee.

If we were to hold that even in such a case possession is still of the licensee, the purpose of the Arms Act would be completely negatived. It would then be open to anybody to take a license and pass on the weapon to an undesirable person through a pledge, and the control that the Arms Act envisages would disappear.

We are therefore of opinion that in a case of pledge or pawn possession passes from the licensee to the pawnee or pledgee, and if the pledgee or pawnee has no license to keep the gun in, his possession, he is guilty under Section 19 (f) of the Arms Act.

We may in this connection refer to -- 'State v. Jayantilal Laxmishanker,' AIR 1951 Sau 58 (E), where also a similar view was taken. We are, therefore, of opinion that the Magistrate was wrong in acquitting the accused under Section 19 (f) of the Arms Act.

9. Then comes the question of sentence. The accused is a young man of twenty years of age, and probably did not understand that it was an offence to take a fire-

arm in pledge like this. Under these circumstances we think that ends of justice will be met by imposing on him a fine of RS. 25/-.

10. We, therefore, allow the appeal, convict Ram Kishan under Section 19 (f) of the Arms Act, and sentence him to a fine of Rs. 25/-. In lieu of non-payment of fine, he will undergo one week's rigorous imprisonment. The fine will be paid within two' weeks.

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