

Kanhaiyalal Vs. State

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Court : Rajasthan

Decided On : Mar-30-1960

Reported in : AIR1961Raj63

Judge : D.S. Dave, J.

Acts : Arms Act, 1878 - Sections 19 and 20

Appeal No. : Criminal Appeal No. 294 of 1959

Appellant : Kanhaiyalal

Respondent : State

Advocate for Def. : B.C. Chatterji, Asst. Govt. Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Appeal allowed

Judgement :

D.S. Dave, J.

1. This is an appeal by accused Kanhaiyalal against the judgment of the learned Sessions Judge, Bikaner, dated 29th June 1959, whereby he has been convicted under Section 20 of the Indian Arms Act and sentenced to one year's R. I.

2. The charge against the appellant, which has been found to be proved against him by the trial court, was that on the night between 6th and 7th, August, 1958, when his personal search was taken by Shri Vinod Kishan Kaul, Assistant Superintendent of Police (under training), one Mauser automatic pistol No. 103464 together with 8 live cartridges was found in the pocket of his shirt which he was wearing. The allegation against the appellant was that he had not obtained any licence for possessing a fire-arm or ammunition.

It was further alleged against him that since the pistol was found in the right hand side of his lower pocket wrapped up in a handkerchief, he committed an act mentioned in Clause (f) of Section 19, of the Arms Act in such manner as to indicate an intention that the said act may not be known to any public servant as defined in the Indian Penal Code. Thus, he was charged for committing an offence under Section 20 of the Arms Act, The accused denied the recovery of the arm and ammunition from his person, but the trial court found this fact proved against him and convicted and sentenced him as mentioned above.

3. Learned counsel for the appellant has raised two objections in this Court. It is contended, in the first instance, that the learned Sessions Judge has committed an error in convicting the appellant under Section 20 by presuming that he intended to conceal the pistol and cartridges from the eye of any public servant on the mere ground that they were found in his pocket. It is next contended that if the charge under Section 20 does not stand, then the appellant cannot be convicted even under Section 19(f), because no sanction of the District Magistrate was obtained before the institution of the proceedings as required by Section 29 of the Arms Act.

4. Now, with regard to the first point, learned counsel for the appellant has referred to *Udham Singh v. Emperor*, AIR 1915 Lah 193. In that case one Udham Singh was found carrying a revolver in his pocket at about 7.45 p.m. It was observed as follows:

'No man, who carries a revolver, would put it anywhere else than in a pocket. For the sake of convenience he would not think of carrying it in his hand, and unless he wished to advertise its possession to the whole world, he would not carry it exposed to view as in a belt'.

With this observation it was held that the conviction of the accused under Section 20 was not justified. Similarly, in *Ramchander v. Rex*, AIR 1950 All 386 a person was found carrying an unlicensed pistol in a hand-bag which was locked. On being asked by a public servant, the accused admitted even before the hand-bag was opened that there was a pistol in that bag. It was held that there being no special concealment as contemplated by Section 20, the offence was covered by Section 19(f) but not under Section 20 of the Act.

The learned Judge, who decided this case, has referred to a number of authorities which need not be reproduced again. I agree with the view taken in *Udham Singh's* case, AIR 1915 Lah 193 that the mere fact that a fire-arm is recovered from the pocket of the accused without any additional circumstance would not bring the case within the ambit of Section 20 of the Arms Act. In other words, it cannot be presumed against him simply because a revolver is found in his pocket that he had an intention to conceal it from the gaze of a public servant.

Even those persons who hold licences to carry arms generally keep pistols and revolvers in their pockets and it is not usual for them to exhibit them openly in a belt like a police or military officer. It is contended by learned Assistant Government Advocate that the accused had wrapped the pistol in handkerchief and this fact indicates his intention to conceal the pistol. To my mind, this contention is not tenable.

Most of the people keep the revolver either in a leather-bag or in a cloth-bag in order to keep it protected from dust etc. Simply because the accused had put a handkerchief on the revolver, it would not be proper to presume that he had no other intention but to conceal it from the eye of a public servant. I do not, therefore, agree with the learned Sessions Judge about the presumption which he has raised under Section 20 of the Arms Act.

The proper course, in my opinion, was to prosecute the appellant under Section 19(f). This Court would have considered the question of altering his conviction under Section 19(f), but I find from the record that the prosecution did not obtain sanction from the District Magistrate before instituting proceedings against the appellant. Learned Assistant Government Advocate has also not been able to

point out any such sanction.

5. The appeal is, therefore, allowed and the accused is acquitted of the offence under Section 20 of the Indian Arms Act. This should not, however, be construed as his acquittal under Section 19(f). The accused is on bail and his bail bond is discharged.

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