

In Re: Vairavan Servai

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Court : Chennai

Decided On : Jan-17-1924

Reported in : AIR1924Mad668; (1924)46MLJ401

Appellant : In Re: Vairavan Servai

Judgement :

Krishnan, J.

1. This is an application made to this Court to revise the conviction of the accused, one Vairavan Servai, under Section 19 (e) of the Arms Act, as he was found carrying a loaded gun in contravention of the provisions of Section 13 of the same Act which runs thus: 'No person shall go armed with any arms except under a license and to the extent and in the manner provided thereby. '

2. What happened in this case was that the accused Vairavan Servai was found with a loaded gun trying to shoot game in the forest. When he was asked for an explanation he said that his master Mr. Delhi Batcha Thevar owned the gun, that he was carrying it for him and that his master was somewhere in neighbourhood, but, when he was asked to fetch his master, he was unable to do so; in fact his master was nowhere near, The finding is that he was using the gun for his own purposes.

3. It has been urged before us that Mr. Delhi Batcha Thevar is a person exempted under the Rules framed under the Arms Act published in the Fort St. George

Gazette of January 13, 1920, and that as a retainer or servant of Mr. Delhi Batcha Thevar the accused was also entitled to carry the gun and he had therefore committed no offence by doing so. In the first place, we are not sure whether the accused's master is entitled to claim exemption under Clause 11 in the list of exempted persons as a landholder as the learned Vakil argues. To make sure of it would be necessary to call for an express finding on that point. But we will assume for the purpose of this case, without deciding the question, that Mr. Delhi Batcha Thevar is entitled to contend that, because his master is an exempted person he has not infringed the Act. We do not think his contention is correct, for, on the findings in this case, he was not carrying the gun for his master at all but he was using the gun himself for his own purposes in the forest for shooting game. We do not think there is anything in the wording of Section 19 (e) of the Act which would justify us in going so far as to say that any person, who has got a license or who is exempted from taking out a license, is entitled to allow any servant of his to use the gun for the latter's own purposes.

4. We need not refer to all the authorities that have been cited to us, for except the case in *Madho Lal v. The Emperor* (1908) 13 C.W.N 1211 the other cases turn upon the facts of those cases. It has been held in that case that, where an accused, a servant, was found using a gun lent to him by his master who had a license, and using it for his own purposes, his act was an infringement of the provisions of Section 19, Clause (f) of the Arms Act. Clause (e) of the section is very similar to Clause (f). We agree with that ruling of the Calcutta High Court.; that case has considered the previous cases including *Queen Empress v. Gungadin* ILR (1899) A 118 : 19 MWN 213. We think it will be an unjustifiable extension of the Act to hold that a person having a license can allow any servant of his to do what he likes with his gun, as the learned Vakil for the accused argues before us. If the servant carries the gun for purposes of his master or in the presence of his master that may not be an offence under the Act; but to go further, we think, will be going against the terms of the Act. We think that, in this case, there was a clear infringement of the provisions of Clause (e) of Section 19 of the Act by the accused, and that therefore he is guilty of the offence that has been found proved against him by the lower Courts.

5. The question, however, remains as to what the punishment should be and whether the gun which has been ordered to be confiscated should be confiscated. It would seem from the correspondence that Mr Delhi Batcha Thevar was rather misled by certain letters of the District Magistrate, particularly Ex. I, in thinking that he was entitled to allow his gun to be used by his servant, Vairavan Servai, the accused in this case, whose name he gave to the District Magistrate in Ex. V; apparently he and his servant honestly believed that they were doing nothing wrong in allowing the servant to take the gun and use it as was done in this case. We therefore think that the order of confiscation should not be enforced; we set aside the Order of confiscation of the gun in this case. We consider however that the fine of Rs. 30 in the circumstances of this case is not an excessive sentence and we confirm the fine. Subject to the above modification as to confiscation we dismiss the petition.

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