

The Queen-empress Vs. Kishunwa

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Court : Kolkata

Decided On : Jan-24-1893

Reported in : (1893)ILR20Cal444

Judge : Prinsep and ;Ameer Ali, JJ.

Appellant : The Queen-empress

Respondent : Kishunwa

Judgement :

Prinsep and Ameer Ali, JJ.

1. These proceedings were very arbitrary and unjust. It is not denied that the master of the accused has a license sufficient to cover the sword carried by him. He has been convicted simply because he had not the license with him, and he was given no opportunity of producing it before he was prosecuted. The law does not require, nor the license provide, that a license to carry arms shall always be on the person of the particular man. If, on being required to show his license, the bearer of arms is prepared to produce it on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge of infringing the Arms Act and to show that the prosecution was without proper consideration.

2. It has also been said in support of the order that because the license was given for one retainer to carry arms, the arms could not be carried except in the presence of the master, the actual licensee. This is a very narrow construction of the terms of the license which cannot be reasonably placed upon it. The reasonable construction is that any retainer can carry the particular arms with the permission of his master. We further observe that the award of a portion of the fine to the Police officer who arrested the accused was injudicious as encouraging interference without sufficient cause. When the Police officer required the accused to produce the license for the sword he was carrying, and was told that he had one, not on his person but at home, the Police officer, if he had any doubt on the subject, should have accompanied the accused to his house to satisfy himself by seeing it.

3. The conviction and sentence must be set aside, and the fine, if paid, refunded.

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