

A. Malcolm and anr. Vs. Emperor

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Court : Kolkata

Decided On : Aug-18-1932

Reported in : AIR1933Cal218

Appellant : A. Malcolm and anr.

Respondent : Emperor

Judgement :

1. The appellants have been convicted under Section 19(f) read with Section 14, Arms Act, and sentenced to periods of imprisonment and fines. The prosecution case is that an officer of the Customs Preventive Service received certain information on 4th January. The information was conveyed to the Superintendent of the Preventive Service who deputed an Indian Officer, Mr. Burman, to act as a bogus purchaser of an automatic pistol.

2. On the morning of 5th January they proceeded to Prinsep Memorial about 10-45 a.m. and after about an hour they saw the accused Malcolm come up to the memorial. The informer introduced Malcolm to Burman as the vendor and he said that he wished to sell the pistol which he produced. Negotiations then took place. The vendor wanted Rs. 440 for this revolver and another revolver which Malcolm said he had for sale. The bogus purchaser told him that he was willing to give him Rs. 300 for the pair. At this point by an agreed signal two other men from the Customs Department came up and arrested Malcolm. They found the pistol in his pocket. On his being seized he shouted out for the other accused Betteley and

they were both brought under arrest and later on produced at the thana where a license which had expired on 31st December was found with Betteley. The suggestion of the prosecution is that the whole of the transaction was illegal inasmuch as the accused intended to make a surreptitious sale to a person who was not entitled to possess the weapon, and that the license had been obtained by Betteley merely for the purpose of enabling him to effect this transaction. Mr. Greenfield, Superintendent, Customs Preventive Service, says that Mr. Mann, another witness, had informed him of the intended sale of the pistol as far back as October 1931, and it was then that he instructed him (Mr. Mann) to get into touch with Mr. Burman who posed himself as the intending purchaser. It appears that the license for this pistol was not renewed in January. It appears from the statement made by Mr. Burman in cross-examination that there was no intention of the immediate delivery of the pistol by the accused to him. He says that:

Malcolm told him that he would deliver both the weapons together and I would pay him then.

3. As only one weapon was with him, it is clear that the delivery was intended to take place at a subsequent date. In any case as the sale was not completed no offence was committed, as negotiations for sale to a person who has no license is not in itself an offence. An offence under Section 19(a) of the Act is only committed if the weapon is actually delivered to a person who has not got a license. But there has been an offence committed under Section 19(f) inasmuch as the accused Betteley had in his possession or under his control an automatic pistol in contravention of the provisions of Section 14, Arms Act, inasmuch as his license had already expired on 31st December. It is true that such delay in the renewal of the license is not ordinarily prosecuted. There is a Rule (No. 82) in the Bengal Government Arms Act Manual to the effect that ordinarily applications received for renewal of license within 30 days after the date of expiry should be granted. But that does not affect the provisions of Section 19 which states that a person who has in his possession arms in contravention of the provisions of S, 14 commits an offence. It has been argued that the word 'extent' in Section 14 only refers to territorial extent, and in support of that reference has been made to form 16 and the conditions thereunder (which are found in Sch. 8, Arms Act Rules) in

which 'extent' in Col. 10 refers to territorial extent only, and condition three there also refers to territorial extent only.

4. But that does not limit the meaning of the word 'extent' in Section 14, Arms Act. It is true that anyone who fails to deposit arms of which license has expired or who is in unlawful possession is also liable under C1. (i), Section 19, Arms Act. But no authority has been shown to us limiting the meaning of the word 'extent' in Section 14 to territorial extent. So that we think that the possession of arms of which the license has not been renewed is also punishable under Section 19(f), Arms Act, read with Section 14.

5. As regards the possession of Malcolm we think where a weapon is made over merely for the purpose of negotiating a sale such possession is not unlawful inasmuch as it is not possession of the weapon with the intention of using it as a weapon. Such temporary possession is not possession as contemplated by the Act. We therefore think that Malcolm has not committed an offence under Section 19, Arms Act. In any case, as I have said, negotiations for a sale where no delivery took place would not be an offence. As regards the possession by Betteley we think that he has committed an offence under Section 19, Arms Act, inasmuch as he was admittedly in possession of this weapon after the expiry of the period of his license. Ordinarily under executive instructions no prosecution would result within 30 days. In the present case we agree with the finding of the learned Magistrate that both of the accused were trying to negotiate a sale surreptitiously. Such sales at the present time are highly reprehensible and we think, that in the circumstances we would not be justified in not enforcing the provisions of the law as regards the illegal possession of this weapon beyond the period of license. In assessing the punishment for this offence we cannot take into account the intention of the accused to negotiate this illicit sale as part of the offence of retaining unlicensed arms in his possession, and we think for that offence a sentence of a fine of Rs. 50 will be sufficient punishment.

6. We therefore set aside the sentences which have been passed on both of the accused. We acquit Malcolm but convict Betteley under Section 19(f), Arms Act, and sentence him to pay a fine of Rs. 50 in default to undergo rigorous

imprisonment for three months. Malcolm is discharged from his bail bond and Betteley will be discharged from his bail bond on payment of the fine. The appeal is disposed of accordingly.

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