

Kanhya and anr. Vs. the State

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Court : Himachal Pradesh

Decided On : Nov-20-1950

Reported in : AIR1951HP35

Judge : Chowdhry, C.J.

Acts : Himachal Pradesh (Application of Laws) Order, 1948; ;Arms Act, 1878 - Sections 5, 19 and 29; ;Arms Act, 1860 - Section 32

Appeal No. : Criminal Reference No. 15 of 1950

Appellant : Kanhya and anr.

Respondent : The State

Advocate for Def. : L.N. Sethi, Adv.

Advocate for Pet/Ap. : Joseph Dina Nath, Adv.

Judgement :

ORDER

Chowdhry, J.

1. This is a reference by the learned Additional Sessions Judge of Chamba recommending that the conviction of Kanhya for manufacturing and for being found in possession of arms without licence, and of Sahnu for being found in

possession of arms without licence, and the sentences of fine imposed upon them by a learned first class Magistrate of Chamba be set aside.

2. It appears that on a search of the house of Kanhya, who is a black-smith by profession, two country-made guns and a country-made pistol were recovered. One of the guns belonged to Sahnū, who held a licence for the same but it had expired before the date of its recovery from Kanhya's possession. The other gun belonged to one Phulgari, who held a valid licence for the same.

3. Kanhya's case may be taken up first. He stated that he made the pistol in the time of Raja Ram Singh. The prosecution led no evidence as to when it was manufactured. Section 19 (a) of the Arms Act penalises manufacture of arms, but not retrospectively. The Indian Arms Act was applied to Himachal Pradesh under the Himachal Pradesh (Application of Laws) Order, 1918, which came into force on 25-12-1948, It follows, therefore, that as there is nothing to show that the pistol in question was manufactured by Kanhya after 25-12-1948, his conviction under Section 19 (a) of the Arms Act is unsustainable.

4. Nor could he be convicted alternatively under Section 19 (f) of the Act for being found in possession of the pistol, for previous sanction of the District Magistrate for instituting proceedings against him in respect of this offence, as required by Section 29 of the Act, had not been obtained.

5. Section 29, Arms Act, is subdivided into two portions. The first portion applies to a province, district or place to which Section 32, Clause (2) of Act XXXI [31] of 1860 applied on the date on which the Indian Arms Act came into force. In such places previous sanction of the District Magistrate for prosecuting a person under Section 19 (f), Arms Act, was necessary if the offence was committed within three months from the date on which the Arms Act came into force there, but not thereafter. The learned Government Advocate did not contend that the afore-said provision of Act XXXI [31] of 1860 was ever applied in Chamba. The first portion of Section 29 is, therefore, not applicable to the present case. Under the second portion if an offence under Section 19 (f) is committed in any part of India not being a district, province, or place to which the aforesaid provision of Act XXXI [31] of 1860 applied at the date when the Arms Act came into force, previous sanction

of the District Magistrate for prosecution of a person in respect of the offence is necessary, and that not only where the offence has been committed within three months from the date on which the Arms Act came into force there but for all time to come. It follows, therefore, that no proceedings in Chamba district could be instituted against any person in respect of an offence punishable under Section 19 (f) Arms Act, without the previous sanction of the District Magistrate. No such previous sanction had been obtained in the present case. Kanhya's trial for an offence under Section 19 (f), Arms Act, was therefore, void as being without jurisdiction.

6. As regards the two guns, it has come in evidence that they had been left with him for repairs. There is nothing in the Arms Act necessitating a repairer to obtain a licence. Section 5 of the Act prohibits unlicensed manufacture, conversion or sale, or the keeping, offering or exposing for sale of any arms, ammunition etc.; but manufacture is not the same thing as repair. Kanhya's conviction was, therefore, not justified under any provision of the Arms Act either in respect of the pistol or in respect of the guns.

7. The other accused, Sahnu, has been convicted and sentenced under Section 19 (f), Arms Act. As in his case too no previous sanction of the District Magistrate had been obtained under Section 39, his trial for that offence was also illegal for reasons recorded above.

8. The reference made by the learned Additional Sessions Judge is accepted, the order of the learned first class Magistrate of Chamba dated 19-12-1949 convicting and sentencing the two accused Kanhya and Sahnu, the former under Clauses (a) and (f) and the latter under Clause (f) of Section 19, Indian Arms Act, is set aside, and they are acquitted. The fines, if already realised, shall be refunded to them. The pistol shall be confiscated to the Government and the guns restored to their owners, unless they be not entitled to possess them under the Arms Act, in which latter case the guns shall also be confiscated to the Government. This judgment should be brought to the notice of all the District Magistrates of the States of Himachal Pradesh and Bilaspur through their respective Governments.

