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Court : Himachal Pradesh

Decided On : Jun-10-1953

Reported in : AIR1953HP121

Judge : Chowdhry, J.C.

Acts : Arms Act, 1878 - Section 22; ;Code of Criminal Procedure (CrPC) , 1898 - Sections 241, 254, 255, 256 and 537

Appeal No. : Criminal Reference No. 1 of 1953

Appellant : Sadh Ram

Respondent : State

Advocate for Def. : C.L. Puri, Acting Govt. Adv.

Advocate for Pet/Ap. : Mohan Lal Aukta, Adv.

Disposition : Reference accepted

Judgement :
ORDER

Chowdhry, J.C.

1. This is a reference under Section 438, Cr. P. C., by the learned Sessions Judge of Mahasu and Sirmur, recommending that the conviction of Sadh Ram for an

offence under Section 22, Arms Act, 1878, be set aside and he be acquitted.

2. The facts of the case are not in dispute. Sadh Ram holds a license for a gun. The gun was at the time out of repair, and he was taking it for repairs to a gun-maker at Kot Khai. On his way to Kot Khai he came to know at village Dim that the gun-maker was not at Kot Khai. Sadh Ram thereupon deposited the gun with one Jiwan Ram, promising to return the following day and take it back from him. He however told Jiwan Ram that in case he was unable to return the following day, the gun should be taken by him (Jiwan Ram) to the Police Station along with the license, which was also handed over to Jiwan Ram by Sadh Ram, for inspection. The following day, before Jiwan Ram could take the gun to the Police Station for its inspection, it was recovered from his possession by the Police and Sadh Ram was prosecuted for the offence under Section 22 of the Act.

3. The learned Sessions Judge has made the aforesaid recommendation on two grounds: firstly, that in the above circumstances the gun in question should be deemed to have remained in possession of Sadh Ram and he should not be deemed to have delivered it into the possession of another without previously ascertaining that such person is legally authorized to possess the same within the intendment of para 2 of Section 22 of the said Act, and,secondly, that the trying Magistrate had not complied with the provisions of S 256, Ct. P. C.

4. It is well settled that temporary possession of a fire-arm on behalf of the license-holder without any intention that it be used as such does not amount to possession within the various provisions of the Arms Act under which possession of a fire-arm has been penalized. A number of decisions on this point have been referred to in-- 'Kedar Nath v. Emperor', AIR 1941 Pat 209 (A). In this Patna case itself one of the persons convicted was the license-holder of the gun. It appears that on returning from a shooting expedition he left the gun with a friend with the intention of returning shortly afterwards and taking it back from him. The license-holder was convicted for breach of condition No. 2 of his license, which stated that the license covered only the persons named and the arms and ammunition described therein and such retainers, if any, as might be entered in Column 5. The friend 'of the license-holder was not such a retainer.

It is manifest that on the above facts breach of the condition of the license was also punishable under Section 22 of the Act, as in the present case. It was however held that the possession of the gun must be deemed to have remained with the license-holder though it was not actually in his physical possession, and that his friend must be deemed to have been in possession of the gun on behalf of the license-holder. The circumstances which were taken into consideration in arriving at this finding were that the gun was not left with the friend in order that it might be used, by him, and that the gun was left with the friend only temporarily. The same is the case here.

5. One of the circumstances taken into consideration by the learned Sessions Judge was that the gun was out of repair. The learned acting Government Adyocate has cited in this connection--'Swami Dayal v. State', AIR 1953 All 353 (B), where it was held that possession of even a broken pistol in an unworkable condition is punishable under Section 19 (f), Arms Act. That may be so, but that is not the point which arises in the present case. The fact that the gun in the present case was in an unworkable condition was a circumstance taken into consideration in support of the existence of one of the aforesaid two conditions in which possession of a fire-arm will in law be deemed to be with the license-holder even though its physical possession may for the time being be with another, namely, that in leaving the gun with Jiwan Ram there could possibly have been no intention of its being used by him as such. I therefore agree with the learned Sessions Judge that no offence under Section 22 of the Arms Act has been made out against Sadh Ram.

6. In view of the above finding it is hardly necessary to consider the other ground put forward by the learned Sessions Judge in support of his recommendation. The point has really not been sufficiently elaborated by the learned Sessions Judge. The record shows that although this was a case which was triable as a summons case, the trying Magistrate commenced the trial as if it were a warrant case. In the circumstance, he should have followed the procedure of a warrant, case to the end He omitted however to comply with the provisions of Sections 254, 255 and 256, Cr.P. C.: after the close of prosecution evidence the Magistrate framed no charge, and he did not put any question to the accused to find out if he wanted to cross-

examine any of the prosecution witnesses whose evidence had been recorded.

This was therefore clearly a case covered by the ruling of their Lordships in--'Subrah-mania Ayyar v. Emperor',, 28 Ind App 257 (PC) (C), in which it was held that where an express provision as to the mode of trial has been contravened it amounts to illegality which vitiates the trial and is not cured by Section 537 of the Code. The learned acting Government Advocate cited two rulings,--'Ladha Singh v. Emperor', AIR 1915 Lah 259 (1) (D) and--'Moola v. Emperor', AIR 1914 Lah 556 (E), in support of the view that in such a case the proper order to pass is a remand for retrial. The question is one of mere academic interest in the present case since on the first ground, in any case, Sadh Ram must be acquitted and not be re,-tried. It may however,be stated that, in view of the aforesaid decision of their Lordships of the Privy Council, acquittal and not retrial would be the proper order. This view is also supported by--'Dosabhai v. Emperor', AIR 1915 Bom 14 (F).

7. The reference is accepted, the convictionand sentence passed 011 Sadh Ram are setaside and he is acquitted of the charge under Section 22 of the Arms Act. If the fine has alreadybeen realized, it shall be refunded to him.

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