

asks the plaintiff to state on oath where and by whom the *hundi* was presented for payment; although, so far as I can see, it was not necessary that the *hundi* should have been presented for payment, still the plaintiff has set out the presenting for payment as a fact upon which he relies, and the defendant has put that fact in issue and therefore he is entitled to have statements on oath as to where and by whom the *hundi* was presented for payment. The other interrogatory is disallowed. The plaintiff must answer interrogatories 2 and 3 on oath within 14 days. Costs of this application to be costs in the suit—certificate for counsel.

1913
 BAIJNATH
 KEDIA
 v.
 RAGHUNATH
 PRASAD.
 FLETCHER,
 J.

Application allowed.

Attorney for the plaintiff : *D. P. Khaitan.*

Attorney for the defendant: *Rose.*

J. C.

CRIMINAL REVISION.

Before Imam and Chapman, JJ.

CHARU CHANDRA GHOSE

v.

EMPEROR.*

1913
 May 7.

Arms—Possession of a gun by the servant of a licensee in order to take to a Magistrate for renewal of the license without intention to use the same—Arms Act (XI of 1878), s. 19 (f).

A servant of the holder of a gun-license who is merely carrying it to a Magistrate with the expiring license for renewal thereof, but without any intention to use the gun, is not liable to conviction under section 19 (f) of the Arms Act.

* Criminal Revision, 400 of 1913, against the order of S.C. Gupta, Deputy Magistrate of Khulna, dated Jan. 13, 1913.

1913

CHARU
CHANDRA
GHOSE
v.
EMPEROR.

Queen-Empress v. Tota Ram(1) and *Prabhat Chandra Chowdhry v. Emperor* (2) followed.

THE petitioner was the *naib* of one Jyoti Prasanna Roy of Chandarpur, in the district of Khulna, who held a license for 1912 for a double-barrel breech-loading gun. A few days previous to the expiry of the license the petitioner was sent with the gun and the expiring license to the District Magistrate of Khulna for renewal of the latter. While going to the Magistrate with the gun and the license, he was arrested at Daulatpore, on the 16th December 1912, by the head-constable of Khulna, and sent up for trial before a Deputy Magistrate. He was tried and convicted under s. 19(f) of the Arms Act (XI of 1878), and sentenced, on the 13th January 1913, to a fine of Rs. 20, or in default to one month's imprisonment. The Magistrate found the above facts in his judgment, and held further that the petitioner had no intention to use the gun as he was without cartridges at the time. The petitioner then moved the High Court and obtained the present Rule.

Babu Atulya Charan Bose (with him *Babu Birbhusan Dutt*), for the petitioner. The mere temporary possession by a servant of a gun belonging to his master for the purpose of carrying it to a Magistrate for a renewal of the license is not an offence under s. 19 (f): see *Queen-Empress v. Tota Ram*(1) and *Prabhat Chandra Chowdhry v. Emperor*(2).

Babu Srish Chandra Chowdhry, for the Crown. The whole question turns on the meaning to be given to the word "possession." The servant was in possession in contravention of the law as he was not the licensee. According to the wording of the section the latter should have gone himself with the gun. A

(1) (1894) I.L.R. 16 All. 276.

(2) (1907) I.L.R. 35 Calc., 219.

stringent rule has been laid down as a gun is a dangerous article. In the Allahabad case, the servant was carrying the gun for repairs; here he was taking it for many miles and might have used it on the way.

1913
 CHABU
 CHANDRA
 GHOSE
 v.
 EMPEROR.

IMAM AND CHAPMAN, JJ. This was a Rule on the District Magistrate of Khulna to show cause why the conviction of the petitioner under section 19 of the Indian Arms Act should not be set aside.

The facts of this case are these. The petitioner was carrying a gun on behalf of his master with the license to the Magistrate for the purpose of a renewal of the license, and the authorities prosecuted him for possessing a gun in contravention of the provisions of the Act. The case for the prosecution is not that the petitioner possessed the gun with the object of using it, nor is it alleged that he used it at all. In fact, looking at the case, we find it admitted that the object of the petitioner was merely to carry the gun to the Magistrate. In these circumstances, we do not see how the conviction of the petitioner under section 19 of the Act can be upheld. The cases of *Queen-Empress v. Tota Ram*(1) and *Prabhat Chandra Chowdhry v. Emperor*(2) are sufficient authority in favour of the petitioner.

We, therefore, make this Rule absolute, and set aside the conviction. The fine, if paid, will be refunded.

E. H. M.

Rule absolute.

(1) (1894) I.L.R. 16 All, 276.

(2) (1907) I.L.R. 35 Cal. 219.