

APPELLATE CRIMINAL.

*Before Mr. Justice Spencer.**Re MAHOMED ISMAIL ROWTHER (ACCUSED), PETITIONER.**1911.
September 15.*Arms Acts, s. 19(c)—Intention not necessary to constitute offence.*

An offence under section 19 (c) of the Arms Act is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country. It is not necessary that there should be any particular intention in the mind of the offender to complete the offence.

PETITION under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the judgment of the First-class Sub-Divisional Magistrate G. T. Boag of Negapatam, in Calendar Case No. 37 of 1911, dated the 8th day of April 1911.

The facts are stated in the judgment of the Sub-Divisional Magistrate as follows ;—

“The Negapatam police charge Mahomed Ismail Khan with importation of a revolver under section 19 (c) of the Arms Act.

“Evidence for the prosecution is given by Mr. A. A. Connor, Customs Collector, and Sergeant Boston of the Negapatam police. Mr. Connor says that the accused landed from Penang on February 26th. Mr. Connor was walking from the passenger shed to the landing stage and saw the accused hand a parcel rolled in a cloth to a local merchant. The act looked suspicious ; so the parcel was seized and found to contain a revolver and 36 cartridges. The accused was fined Rs. 10 under the Sea Customs Act and handed over to the police.

“Sergeant Boston was in the custom house and sent the accused in custody to the police-station with a letter from the Customs Collector.

“The accused says he acted *bond fide*. He had a license in Penang and handed the revolver and cartridges over on landing here in order to ascertain the duty payable on them. He pleads not guilty to a charge under section 19 (c). He examines three witnesses who say they met him when he landed. Two of them say they heard him ask the third what duty was payable and saw him hand the parcel containing the revolver

* Criminal Revision Case No. 267 of 1911.

over to the Customs Collector. The third says that the accused handed the parcel to him to give to the Customs Collector. The imputation is not disputed. The only question is whether the accused acted *bonâ fide* or not. He is not entitled to possess arms in India. He should, on landing, have declared the revolver at once and handed it over to the Customs Collector. Instead of this, he handed it in a manner that aroused the suspicion of the Customs Collector, to a third person. The Customs Collector was standing close at hand ; there was no need to hand the parcel to a third person and this fact alone is enough to prove his intention to evade the custom and in fact the revolver, though not entitled to do so.

"I therefore find him guilty under section 19(c) and sentence him to pay a fine of Rs. 50.

"Fine paid."

K. R. Subramania Sastri for *V. Ryru Nambiar* for petitioner.

The Public Prosecutor on behalf of the Government.

ORDER.—Technically the petitioner committed an offence under section 19 (c) of the Arms Act as soon as he landed in British India with a revolver which he was not lawfully entitled to possess in this country. It is not necessary that there should be any particular intention in the mind of an offender to complete the offence punishable under this section. In this case the facts, as found and admitted, are that between the landing stage and the customs shed, the petitioner was detected by the Customs Officer in the act of handing to a third person a parcel rolled in cloth which, when opened, was found to contain a revolver and 36 cartridges. The conduct of a traveller who honestly intended to comply with the rules would have been to leave the weapon in the bag where it was, till the luggage, had been conveyed to the Customs Officer and then before the examination of luggage to make a declaration about the fire arm and at once to deposit it with the Customs officials. When the petitioner acted as he did, it cannot be said for certain that he would not have smuggled the revolver, though unnoticed, if the Customs Officer had not chanced to come up at the critical moment.

He has been fairly treated and I decline to interfere with the conviction or sentence.

SPENCER, J.
 Re. MAHOMED
 ISMAIL
 ROWTHER.