

REVISIONAL CRIMINAL.

1902

May 5.

Before Mr. Justice Know and Mr. Justice Blair.

EMPEROR v. HARPAL RAI.*

Act No. XI of 1878 (*Indian Arms Act*), section 19—"Going armed"—The mere carrying of arms for purposes other than their use as such not an offence.

One C. N., a person entitled to possess and use fire-arms, gave a pistol to an acquaintance, who was not entitled to possess and use fire-arms, asking him to take it and get it repaired in a neighbouring town. This acquaintance gave the pistol to his father Harpal Rai, who was taking it into the town to get it repaired, when he was arrested, and charged with an offence under section 19 of the Indian Arms Act, 1878.

Held that Harpal Rai was under the circumstances guilty of no offence under the Arms Act.

The mere temporary possession, without a license, of arms for purposes other than their use as such is not an offence within the meaning of section 19 of the Arms Act. *Queen-Empress v. Alexander William* (1) *Queen-Empress v. Bhure* (2) and *Queen-Empress v. Tota Ram* (3) referred to.

THE facts of this case are briefly as follows:—

One Mr. Colin Nichols, a European British subject, and a resident of the district of Ghazipur, being the owner of a pistol which was in need of repairs, gave the pistol to the son of one Harpal Rai, that he might take it into the neighbouring town of Zamania and have it repaired there. The pistol was passed on to Harpal Rai, who was taking it to Zamania, when he was arrested, and charged with an offence under section 19 of the Arms Act, 1878. He was convicted by a Magistrate of the first class and sentenced to pay a fine of Rs. 5. Harpal Rai applied in revision to the Sessions Judge, who reported the case to the High Court for orders under section 438 of the Code of Criminal Procedure, with a recommendation that the conviction and sentence should be quashed, being of opinion that, having regard to the case of *Alexander William* (1), the conviction was erroneous.

On this reference the Assistant Government Advocate (Mr. W. K. Porter) appeared and laid before the Court two subsequent cases—*Queen-Empress v. Bhure* (2) and *Queen-Empress v.*

* Criminal Reference No. 248 of 1902.

(1) Weekly Notes, 1891, p. 208.

(2) Weekly Notes, 1892, p. 221.

(3) Weekly Notes, 1894, p. 82.

Tota Ram (1) in which the case of *Alexander William* had been considered.

The following order was passed on the reference:—

KNOX and BLAIR, JJ.—Harpal Rai has been found guilty of an offence under section 19 of the Arms Act. The learned Magistrate who has convicted him found on the evidence that on January the 9th one Mr. Colin Nichols gave a pistol to the son of Harpal Rai, and asked him to get it repaired for him in Zamania. As Harpal Rai was taking the pistol to the blacksmith in accordance with his instructions, he was charged with the offence of going armed with the aforesaid pistol. This Court has pointed out, first, in the case of *Queen-Empress v. Alexander William* (1) and again in the case of *Queen-Empress v. Bhure* (2) and again in *Queen-Empress v. Tota Ram* (3) that the mere temporary possession, without a license, of arms for purposes other than their use as such is not an offence within the meaning of section 19 of the Indian Arms Act of 1878. The learned Magistrate apparently thought that the principle that underlies these decisions was confined to the case of a servant carrying his master's gun, and had no application to a friend performing the same office for a friend. The essential of the offence is the going armed, that is, carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises.

It is difficult to understand how a pistol which was in need of repairs could be seriously looked upon either as a weapon of offence or defence.

Another difficulty which appears to have weighed with the learned Magistrate is that if this principle be accepted, the Arms Act would become a dead letter for district like Ghazipur.

The learned Assistant Magistrate is bound to follow the rulings of this Court, and not to hesitate because he conceives that their results will be, in his opinion, disastrous in some direction or other.

We set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

(1) *Weekly Notes*, 1891, p. 208.

(2) *Weekly Notes*, 1892, p. 221.

(3) *Weekly Notes*, 1894, p. 82.