

in regard to the theft should be postponed till after the expiry of the imprisonment being suffered under section 123, Criminal Procedure Code, must be set aside. The substantive sentence of imprisonment under section 379, Indian Penal Code, must take effect from the time at which it was passed.

Order set aside.

R. R.

1912.
EMPEROR
v.
VISHNU
BALKRISHNA.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

EMPEROR v. KOYA HANSJI.*

Indian Arms Act (XI of 1878), sections 13 and 19 (e)—Arms—Gun—License—Going armed without license—Servant fetching gun for his master—Liability of servant.

1912.
September 27.

The accused was sent to an adjacent village by his master, who was licensed to bear arms, to fetch a gun which he (the master) had left there. While so returning with the gun, the accused was arrested for going armed in contravention of the provisions of section 13 of the Indian Arms Act (XI of 1878). He was convicted and sentenced under section 19 (e) of the Act.

Held, acquitting the accused, that the mere temporary possession, without a license, of arms for purposes other than their use was not an offence within the meaning of section 19 of the Indian Arms Act (XI of 1878).

Emperor v. Harpal Rai(1), followed.

THIS was an application in revision against conviction and sentence passed by N. A. Parnaik, Magistrate, First Class, at Broach.

The accused was the servant of one Mahomedbhai, who held a license to keep a gun. Mahomedbhai sent his servant to a neighbouring village where he had left his gun. The accused while so returning with the gun was arrested for going armed with a gun in contravention of the provisions of section 13 of the Indian Arms Act, 1878. The accused was, on these facts, convicted under section 19 of the Indian Arms Act and was sentenced to pay a fine of Rs. 5.

The accused applied to the High Court.

* Criminal Application for Revision No. 278 of 1912.

(1) (1902) 24 All. 454.

1912.

G. N. Thakore, for the accused.*L. A. Shah*, Acting Government Pleader, for the Crown.EMPEROR
v.
KOYA
HANSJI.

BATCHELOR, J. :—The facts in this case are these: The applicant is the servant of one Mahomedbhai Kasambhai, an inhabitant of Broach, who has a license to keep a gun. Mahomedbhai and the applicant left Broach and went to a neighbouring village called Dhantaria. From there Mahomedbhai returned to Broach leaving his gun behind him. He, therefore, sent the accused to bring back his gun from Dhantaria to Broach, and the accused brought it back. On his way through the city of Broach he was arrested by the police, and has been convicted under section 19 (e) of the Arms Act of going armed in contravention of the provisions of section 13. Section 13 provides that no person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby. It is unfortunate in this case that the prosecution have not put in the license granted to Mahomedbhai, for it may be that the particular terms of that document would be conclusive of the question before us; but in the absence of any assistance in this direction, we think that the established circumstances do not suffice to prove the applicant's guilt under section 19 (e) of the Arms Act. We agree with the Allahabad High Court's decision in *Emperor v. Harpal Rai*⁽¹⁾ where it was said; following previous decisions of that Court, 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 Arms Act: see also *In the matter of Kabi Nath Singh*⁽²⁾. We must, therefore, reverse the conviction in this case and direct that the applicant be acquitted and discharged. The fine, if paid, should be refunded.

The order of confiscation made under section 24 of the Arms Act is also set aside.

Conviction and sentence reversed.

R. R.

(1) (1902) 24 All. 454.

(2) (1899) 3 C. W. N. 394.