CRIMINAL REVISION.

Before Mr. Justice Mirza and Mr. Justice Patkar.

EMPEROR *v.* MANJUBHAI.*

1929
February, 12.

Indian Arms Act (XI of 1878), section 19 (e)—"Goes armed," meaning of—Criminal Procedure Code (Act V of 1898), section 403, sub-section (2), and section 235 (2)—Previous acquittal under section 324, Indian Penal Code (Act XLV of 1860), no bar to subsequent proceedings under section 19 (e), Indian Arms Act.

The words "goes armed" in section 19 (*e*) of the Indian Arms Act imply a motion as well as possession of the arms in contravention of the license and mean nothing more than carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises for its use. The words do not necessarily connote a habitual course of conduct.

Emperor v. *Harpal Rai*[1] and *Emperor* v. *Koya Hansji*,[2] followed.

Emperor v. *Kalyanchand*,[3] referred to.

The acquittal of an accused of an offence under section 324, Indian Penal Code, does not operate as a bar to his prosecution under section 19 (*e*) of the Indian Arms Act.

Emperor v. *Jivram Dankarji*[4] and *Queen-Empress* v. *Croft*,[5] followed.

APPLICATION to revise the order passed by E. I. Patel, Resident Magistrate, First Class, Nadiad, in Criminal Case No. 140 of 1928, convicting the applicant under section 19 (*e*) of the Indian Arms Act, and sentencing him to pay a fine of Rs. 50 and in default to undergo three months' rigorous imprisonment.

The applicant Manjubhai *alias* Gopaldas Govardhandas in the course of a quarrel between himself and his neighbour, one Ranchhod, asked his brother Bhogilal who was then present to go to the house of Jivanlal, another brother of the applicant, and bring him Jivanlal's sword. Bhogilal fetched the sword, the accused took it from Bhogilal and inflicted with it several injuries on Ranchhod and some of Ranchhod's relations. Ranchhod prosecuted the applicant under section 324 of the Indian Penal Code for causing him hurt with a dangerous weapon. The trial Court

*Criminal Revision Application No. 415 of 1928.

(1) (1902) 24 All. 454.
(2) (1912) 37 Bom. 181.
(3) (1922) 24 Bom. L. R. 487.
(4) (1915) 40 Bom. 97.
(5) (1895) 23 Cal. 174.

convicted the applicant of that offence but in appeal the parties compounded the offence and the appeal Court passed an order acquitting the applicant. The present prosecution was instituted against the applicant at the instance of the Police. The applicant was charged under section 19 (*e*) with going armed in contravention of the provisions of section 13 of the Indian Arms Act. It was proved at the trial that neither the applicant nor his brother Jivanlal had any license under the Indian Arms Act to keep the sword. The applicant was therefore convicted under section 19 (*e*) of the Indian Arms Act. The applicant applied to the High Court in revision.

G. N. Thakor, with *U. L. Shah*, for the accused.

P. B. Shingne, Government Pleader, for the Crown.

MIRZA, J. :—The applicant has been convicted under section 19 (*e*) of the Indian Arms Act, XI of 1878, and sentenced to pay a fine of Rs. 50. The facts which gave rise to the prosecution were that in the course of a quarrel between himself and one Ranchhod, his neighbour, the applicant asked his brother Bhogilal, who was then present, to go to the house of Jivanlal, another brother of the applicant, and bring him Jivanlal's sword. Bhogilal fetched the sword, the accused took it from Bhogilal and inflicted with it several injuries on Ranchhod and some of Ranchhod's relations. Ranchhod prosecuted the accused under section 324 of the Indian Penal Code for causing him hurt with a dangerous weapon. The trial Court convicted the applicant of that offence, but in appeal the parties compounded the offence and the appeal Court passed an order acquitting the applicant.

The present prosecution was instituted against the applicant at the instance of the Police. The applicant was charged with going armed in contravention of the

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provisions of section 13 of the Indian Arms Act. Section 13 of the Indian Arms Act provides that no person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby. The finding of the lower Court is that the applicant had no license under the Indian Arms Act in respect of this sword. That finding is not disputed. It is also admitted on behalf of the applicant that his brother Jivanlal had no license for keeping the sword. The lower Court has also found that the accused went armed with the sword. It has been contended before us that the finding of the lower Court on this point is not justified by the facts on which it is based.

It has been urged by Mr. Thakor that to go armed implies habitually going armed. Reliance is placed in this connection on the meaning of the word "go" in Webster's New International Dictionary, 1927 Edition, page 924. The dictionary meaning is *inter alia* thus stated: "To pass about or abroad (in a certain state); to be habitually; as, to *go* armed; . . ." The primary meaning given to the term "go" "is to move on a course; to pass, or be passing, from point to point or station to station; to move onward; to proceed; . . . ." "In contrast with the more neutral verb *move*, *go* carries primarily a notion of self-originated movement." Section 13. of the Indian Arms Act does not use the word "habitually" before the word "go." If we were to accede to the contention of Mr. Thakor on this point, we would be introducing into the section a word which is not there. That even an isolated act of going armed would fall within the purview of the section was decided by a Divisional Bench of this Court in *Emperor* v. *Kalyanchand*.[1] The accused in that case was not a licensee but his cousin, who held a license,

[1] (1922) 24 Bom. L. R. 487.

had handed over the gun to him while proceeding in a marriage procession. The accused had fired some shots during the procession with the result that some persons were accidently injured. The Court held that the case rightly fell under section 19 of the Indian Arms Act. The only plea raised on behalf of the accused in that case was that the terms of the license covered the case of a marriage procession. That contention was overruled. There is nothing in the language of the Indian Arms Act which would, in our opinion, justify the construction which Mr. Thakor asks us to put on sections 13 and 19 of that Act in respect of the words " go armed ".

Mr. Thakor has next contended that the sword was sent for and used for a definite purpose. The applicant himself had not brought it but on finding that his brother Bhogilal had brought it in compliance with his request, he had taken it and used it for inflicting injuries on Ranchhod and others. Mr. Thakor has contended that the applicant's action in respect of the sword on this occasion would not amount to going armed within the meaning of the Indian Arms Act. It is clear that the applicant was in possession of the sword with the definite intention of using it if necessary for committing an offence, and that he used it for inflicting injuries on Ranchhod and others puts the matter beyond any doubt. As was held in *Emperor* v. *Harpal Rai*,[1] the mere temporary possession, without a license, of arms for purposes other than their use as such would not necessarily amount to the offence of " going armed " within the meaning of section 19 of the Indian Arms Act. The learned Judges stated in their judgment that the essential of the offence was the going armed, that is, carrying a weapon with the intention

[1] (1902) 24 All. 454

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of using it as a weapon when the necessity or opportunity arose. The facts of the present case before us are distinguishable from the facts in that case but the remarks of the learned Judges regarding what the essential of the offence of going armed is would apply to this case. In *Emperor* v. *Koya Hansji*[1] a Divisional Bench of this Court followed the ruling in *Emperor* v. *Harpal Rai*.[2]

Reliance has been placed on behalf of the applicant on the decision in the case of *Emperor* v. *Babu Ram*.[3] The facts of that case are distinguishable from the facts of the present case before us, and there is nothing in the judgment which would detract from the statement in the previous judgment of the same Court as to what the essential in an offence of " going armed " under the Indian Arms Act is.

Mr. Thakor has next contended that the applicant used the weapon in a private lane and has urged that the essential element in the offence of going armed is to move with arms in a public thoroughfare or place. We find no such restriction in the language of either section 13 or section 19 of the Indian Arms Act.

Mr. Thakor has next contended that the accused has already been tried and acquitted for an offence arising out of the same facts, and therefore, the present prosecution is barred under the terms of section 403 of the Criminal Procedure Code. Section 403 by sub-section (2) provides :—

" A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)."

Illustration (*b*) to section 403 makes the meaning of sub-section (2) clear. The illustration is :—

" A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time

[1] (1912) 37 Bom. 181. [2] (1902) 24 All. 454.
[3] (1925) 47 All. 606.

when the murder was committed; he may afterwards be charged with, and tried for, robbery."

Section 235, sub-section (1), provides :—

" If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

The offence with which the applicant was charged was a distinct offence from the previous one, and in our opinion, his previous trial for an offence under section 324, Indian Penal Code, would not be a bar to the present proceedings. The ruling of our Court in *Emperor* v. *Jivram Dankarji*,[1] and the ruling of the Calcutta High Court in *Queen-Empress* v. *Croft*[2] support this view.

In the result we are of opinion that the conviction of the applicant is correct and that this application fails. The application is rejected and the rule discharged.

PATKAR, J. :—The first point urged in this application is that the words " goes armed " in section 19, clause (*e*), of the Indian Arms Act import a habit, and reliance is placed on the dictionary meaning of the word " go ". Section 19, clause (*e*), does not include the word " habitually ", and I think that the words " goes armed " connote carrying a weapon with the intention of using it when the necessity or opportunity arises. Even an isolated act of carrying a weapon in contravention of the license would amount to an offence under section 19, clause (*e*), according to the decision in *Emperor* v. *Kalyanchand*.[3] The words " goes armed " would imply a motion as well as the possession of the arms in contravention of the license, and mean nothing more than carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises for its use. That was the meaning

[1] (1915) 40 Bom. 97. [2] (1895) 23 Cal. 174.
[3] (1922) 24 Bom. L. R. 487.

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put upon the words "going armed" in the decisions in *Emperor* v. *Harpal Rai*[1] and *Emperor* v. *Koya Hansji*.[2] The words do not necessarily connote a habitual course of conduct. I think that the circumstances in the present case show that the accused got himself possessed of the sword with the intention of using it as a weapon for the purpose of attacking his opponents, and that while using that weapon he must have moved about. He would, therefore, on the evidence in this case be considered to have gone armed within the meaning of clause (*e*) of section 19.

The second point urged on behalf of the applicant is that the acquittal of the accused of the offence under section 324, Indian Penal Code, operates as a bar to the prosecution of the accused under section 19 (*e*) of the Indian Arms Act. Section 403, sub-section (2), of the Criminal Procedure Code, says :—

"A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)."

In the previous trial the charge under section 324, Indian Penal Code, in respect of the hurt caused with a dangerous weapon and the offence under section 19 (*e*) of the Indian Arms Act could have been joined together as offences having been committed in the same transaction within the meaning of section 235, sub-section (1), of the Criminal Procedure Code. The offence under section 324, Indian Penal Code, was compounded under section 345 of the Criminal Procedure Code, and the composition has the effect of an acquittal under sub-section (6) of section 345, Criminal Procedure Code. The acquittal for the offence under section 324, Indian Penal Code, does not, in my opinion, operate as a bar to the trial of the accused for the offence under section 19 (*e*) of the Indian Arms Act. The decisions

[1] (1902) 24 All. 454. [2] (1912) 37 Bom. 181.

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in *Emperor* v. *Jivram Dankarji*[1] and *Queen-Empress* v. *Croft*[2] support this view.

I agree, therefore, that the rule should be discharged.

Per Curiam.—Application rejected and rule discharged.

Rule discharged.

B. G. R.

[1] (1915) 40 Bom. 97. [2] (1895) 23 Cal. 174.

APPELLATE CRIMINAL.

Before Mr. Justice Mirza and Mr. Justice Patkar.

EMPEROR *v.* KRISHNAJI PRABHAKAR KHADILKER.*

1929 *February* 26.

Criminal Procedure Code (Act V of 1898), sections 347 and 254—Indian Penal Code (Act XLV of 1860), section 124A—Offence triable by Chief Presidency Magistrate or Sessions Court—Magistrate's power of committal to Sessions Court—Test—Congestion of work in Sessions Court—Whether legal ground for refusal to commit.

The petitioner was the editor, printer and publisher of a Marathi daily newspaper called " Nawa Kal " which had a wide circulation of about ten to twelve thousand copies daily amongst the Marathi speaking public. He was charged before the Chief Presidency Magistrate, Bombay, under section 124A of the Indian Penal Code in respect of an article which appeared in the " Nawa Kal ". The offence was triable either by the Chief Presidency Magistrate or by the Court of Session. Before the trial commenced, an application was made on behalf of the petitioner that the Magistrate should conduct the enquiry with a view to the committal of the petitioner to the Court of Session for trial. The Magistrate rejected the application on two grounds :—(1) that there was congestion of work in the High Court Criminal Sessions and (2) that the Magistrate was himself competent to deal with the matter adequately.

Held, (1) that it was a fit case to be committed to the Court of Session, in view of the fact that the petitioner was charged with a serious offence punishable with transportation for life, that the paper which the petitioner edited enjoyed a large circulation owing to which the case assumed a public importance, that the Sessions Court would be in a better position than the Chief Presidency Magistrate to pass an adequate sentence and that the desire of the petitioner was that he should be tried before a Judge and Jury.

Emperor v. *Bhimaji Venkaji*[1] and *Emperor* v. *Achaldas Jethamal*,[2] followed.

King-Emperor v. *Pema*[3]; *Queen-Empress* v. *Kayemullah Mandal*[4] and *Emperor* v. *Bindeshri Goshain*,[5] distinguished;

*Criminal Application for Revision No. 61 of 1929.

[1] (1917) 42 Bom. 172. [3] (1902) 4 Bom. L. R. 85.
[2] (1925) 28 Bom. L. R. 293. [4] (1897) 24 Cal. 429.
[5] (1919) 41 All. 454.