

CHAPTER 5

Cases Under Special and Local Acts

Part A

THE INDIAN ARMS ACT, 1878

1. Definition of Arms—The definition of “Arms” in the Indian Arms Act is not exhaustive and the question whether a particular weapon does or does not fall within the scope of the Act must be decided in view of all the circumstances of each case; neither the length, the breadth or the form of the blade of a weapon nor the handle afford any certain test. Whatever can be used as an instrument of attack or defence and is not an ordinary instrument for domestic purposes falls within the purview of the Act. Weapons intended primarily for domestic or agricultural use are not arms. (c.f. 191 Indian Cases 323, 16 P.R. 1900, 32 P.R. 1918 and I.L.R. 2 Lahore 291).

2. Concealment of arms—The question whether a case falls under Section 19 or 20 of the Indian Arms Act, 1878, is at times difficult to decide; but each case of concealment of arms must be decided on its own facts. For a conviction under Section 20, there must be some special indication of an intention that the possession of arms was being concealed from a public servant or a railway servant, (c.f. 8 P.R. 1915; I.L.R. 7 Lahore 65).

COMMENTS

Each case of concealment of arms must be decided on its own facts as to whether it falls under section 19 or section 20 of the Arms Act, but for section 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier.

Thus, where the appellant rode on horseback to a rendezvous with arms for sale, wrapped in a gunny bag, at a place where he would not anticipate meeting the police, and was arrested while settling the price and convicted under section 20 of the Arms Act—

Held, that, although it was a case of trafficking in arms requiring the full sentence, the conviction must be altered to one under section 19 (f) of the Act. *Chet Singh vs. The Crown*, (1926) I.L.R. VII Lah. 65. (*Crown vs. Azu*, (1906) Cr. L. J. 259 (F. B.), and *Khem Singh vs. Crown*, 8 P. R. (Cr.) 1915, followed.) (*Ibrahim vs. Crown*, 9 P. R. (Cr.) 1912, dissented from.)

3. Kirpans—‘Kirpans’ possessed or carried by Sikhs are exempt from the operation of the Arms Act but the exemption does not extend to manufacture of Kirpans by a Sikh (I.L.R. 3 Lahore 437). The word ‘Kirpan’ has not been defined in the Act or the rules framed thereunder. It has been held in I.L.R. 5 Lahore 308 that it can only be understood and read as meaning a ‘sword’ and there is no warrant for holding that it must be of a particular type or that it must not exceed any particular dimensions.

COMMENTS

A *Sikh*, was convicted by a Magistrate under Section 19 (a) of the Indian Arms Act, for having manufactured and sold *kirpans* without a license. The Sessions Judge acquitted him having regard to the entry in the second schedule annexed to the Indian Arms Rules, which showed that *kirpans* possessed or carried by *Sikhs* are excluded from the operation of all the prohibitions and directions contained in the Arms Act.

Held, that the exemption was not applicable to the accused-respondent who was therefore guilty of an offence under section 5 of the Indian Arms Act, punishable under section 19 (a). *The Crown vs. Basta Singh*, (1922) I.L.R. III Lah. 437.

4. An Article which comes within the definition of 'Arms' in the Act would not cease to be so by the fact that it is used for religious purposes. In I.L.R. 1941 Lahore 789 a spear having the appearance of a spear and capable of being used as spear was held to fall within the definition and the facts that it is called by a different name or was electroplated and used for religious purposes were held not to be material.

COMMENTS

In cases under the Arms Act it is always a question of fact whether the article for the possession of which a charge under the Act is made comes within the definition of 'Arms' or not.

The possession of an article within the definition of 'Arms' in Section 4 of the Arms Act is an offence under Section 19 (f) of the Act and the fact that such an article is used for religious purposes does not relieve the person in possession from the operation of the Act.

The spearheads used by the *Nihang Sikhs* as '*Nishan Sahibs*' or religious emblems (as in the present case) are 'Arms' within the meaning of the Arms Act. *The Crown vs. Sobha Singh*, (1941) I.L.R. XXII Lah. 789.

5. The possessions of 'arms' by a person after the expiry of his licence and before its renewal was held to be in contravention of Section 14 and therefore an offence punishable under Section 19 (f) of the Arms Act in I.L.R. 1943 Lahore 756. The period of grace allowed for the making of an application for the renewal of a licence does not mean that the quondam licence-holder is entitled as of right to have the licence renewed on payment of the fee mentioned.

COMMENTS

The respondent holding a license for a gun for about 15 years, got it renewed from time to time, the last renewal being on 15th of January, 1940 for a period of one year commencing the first of January, 1940, and expiring on 31st of December, 1940, An application for the renewal of the license for the gun for the year 1941 was made on 9th of June, 1941.

Held, that during the period between 1st of January and 9th of June, 1941, the respondent was in possession of the gun without a license in contravention of the provisions of Section 14 of the Indian Arms Act which was an offence punishable under Section 19 (f) of the Act. *King-Emperor vs. Bakhshi Ram*, (1943) I.L.R. XXIV Lah. 756.

6. For cases in which an arm is found to be in possession or control of two or more persons the observations of a Full Bench of the Lahore High Court in A.I.R. 1944 Lahore 339 would be found useful.

Part B
THE PUNJAB EXCISE ACT, 1914

1. Deterrent sentences—In awarding punishment for an offence under the Excise Act the Courts should bear in mind that illicit distillation implies a good deal of preparation and results not only in loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escape detection, and it is, therefore, necessary to impose a sentence which will have a deterrent effect.

2. Application of Section 562, Cr.P.C. not advisable for offences under Section 61(1) of the Excise Act—Although Section 562 of the Code of Criminal Procedure [See Section 360 of new Code] (as amended by Act XVIII of 1923) applies also to persons who are found guilty of an offence under a special or local Act, its provisions should not ordinarily be applied to a person convicted of an offence under Section 61(1) of the Excise Act which implies previous preparation and often escapes detection. (I.L.R. 7 Lahore 32).

COMMENTS

In awarding punishment for an offence under the Excise Act the Courts should bear in mind that illicit distillation implies a good deal of preparation and results, not only in loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence escapes detection, and it is, therefore, necessary to impose a sentence which will have a deterrent effect. *The Crown vs. Piara Singh*, (1926) I.L.R. VII Lah. 32. (*Crown vs. Sujjan Singh*, 19 P. R. (Cr.) 1916, followed.)

Although section 562 of the Code of Criminal Procedure (as amended by Act XVIII of 1923) applies also to persons who are found guilty of an offence under a Special or Local Act, its provisions should not ordinarily be applied to a person convicted of an offence under section 61 (1) of the Excise Act which implies previous preparation and often escapes detection. *The Crown vs. Piara Singh*, (1926) I.L.R. VII Lah. 32.

3. Minimum punishment in certain cases. Enhanced sentences for repetitions of offences. Security for abstaining from such crimes, etc.—The amendments made in the Punjab Excise Act, 1914 by Punjab Acts No. IX of 1948 and 35 of 1956 may be carefully studied. A person found in possession of a working still for the manufacture of an intoxicant is punishable under Section 61(1) with a minimum sentence of six months imprisonment and fine of two hundred rupees and this offence has been made non-bailable. In certain other cases the law provides that the offender shall be punishable with imprisonment and fine. This means, that a sentence of imprisonment, however short, must be awarded. Section 68-A authorises the Court to require a person, at the time of conviction for certain offences, to execute a bond, with or without sureties, for abstaining from the commission of those offences for a period not exceeding three years. The form of bond is given in Schedule II of the Act.

Part C
THE INDIAN OPIUM ACT, 1878

1. Rule broken should be specified—Charges of offences under Section 9 of the Indian Opium Act should specify not merely Section 9 which prescribes the penalty for the breach of various rules under the Act, but also the particular rule which the accused is alleged to have broken and so rendered himself liable for punishment under Section 9 (c.f. 10 P.R. 1888 : 19 P.R. 1891).

2. Distribution of fines among informants and helpers—There is no authority conferred by the Opium Act upon a Magistrate to distribute fines amongst person who may have helped in the detection of an offence under the Act. (*see* 13 P.R. 1894).

3. ‘Imprisonment’ may be of either description—Section 9 of the Opium Act does not specify the kind of imprisonment that may be awarded on a conviction under the Act. In view of clause (27) of Section 3 of the General Clauses Act, 1897 imprisonment can be of either description defined in the Indian Penal Code.

4. Opium cases should be decided expeditiously—The Courts should try to decide cases of Opium Smuggling speedily. The seizures of dangerous drugs have to be reported by the Government of India to the United Nations who have also to be kept informed of the final outcome of each case. The question is also included every year on the agenda of the United Nations Narcotics Commission. The delay in the prosecution of these cases leads to unfavourable criticism by the members of this international body. The Courts should, therefore, dispose of these cases as expeditiously as possible. (Punjab Government letter No. 4437-J (C)56/ 48654, dated the 11th/23th June, 1956).

Part D
THE INDIAN RAILWAYS ACT, 1950

1. Priority to railway cases—Magistrates should give precedence to Railway prosecutions in cases of the kind under notice and should dispose of them as early as possible at the sitting of the Court on each day on which there happen to be any fixed for hearing. A Magistrate should, except on Sundays and gazetted public holidays, be always available and sitting in Court during proper hours to take up such cases.

2. Police to fix the first date and inform accused and witnesses—The Railway Police should, in non-cognizable cases taken up under Section 132 of the Indian Railways Act, in which the accused person has been released on security (and in which it would cause inconvenience to refer the Magistrate in the first instance to fix a date), at once fix and inform the accused person and witnesses of the date on which, their attendance will be required before the Magistrate.

3. Magistrate may fix date in certain cases—Whenever it is possible to do so, without causing serious inconvenience, the Railway Police authorities should request the Magistrate to fix a date and to inform those whose attendance is required accordingly.

4. Cases to be tried at headquarters or other places within easy access from the Railway line—As a general rule and where no special reasons exist to the contrary, Railway Police cases should be tried at the headquarters of districts or sub-division or at places within easy access from the Railway Line.

5. Money recovered to be credited in the Treasury—All money recovered by Courts as excess fares under Section 112, 113 and 115 of the Act should be paid into the Treasury to be credited to the Railway Department through the Exchange Accounts and intimation sent to the Audit

Department of the Railway Administration concerned. In no case should any money be paid to the party representing the Railway in Court.

Part E
THE PUNJAB LAWS ACT

1. Laws peculiar to this Province as embodied in the Punjab Laws Act, 1872—Attention is invited to certain provisions of law peculiar to this State, *e.g.*, the track law, slaughter of kine, etc., which are embodied in the Punjab Laws Act, 1872.