

respect of the purchase of old ornaments for making new ones has been conceded to be liable to tax.

M/s. Puran
Chand-Gopal
Chand

On the material on the existing record to which our attention has been drawn by the petitioners' counsel I do not think it is possible to hold the impugned order (Annexure "A") to be tainted with such a serious legal infirmity appearing on the face of it as would induce me to quash the assessment on the writ side.

v.
The State of
Punjab and
others

Dua, J.

The result is that this petition fails and is hereby dismissed with costs.

D. FALSHAW, C.J.—I agree.

D. Falshaw, C.J.

B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

STATE,—Appellant.

versus

RAM CHAND,—Respondent.

Criminal Appeal No. 142 of 1961,

Arms Act (XI of 1878)—Sections 19(f), 19(i) and 29—Proceedings initiated against an accused person under section 19(f) without sanction under section 29—Whether can form basis of conviction under section (19c) by having resort to section 237, Code of Criminal Procedure.

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Held, that on account of the absence of previous sanction, as required by section 29, Indian Arms Act, the institution of proceedings under section 19(f) of the Act against an accused person are contrary to law and void. If the condition precedent for the initiation of the proceedings is absent, the entire subsequent proceedings would be illegal and without jurisdiction. These proceedings cannot be considered lawful and valid for convicting the accused under section 19(i) by having resort to section 237, Code of Criminal Procedure. Without being properly charged

under section 19(i), the proceedings started under section 19 (f) without sanction cannot legally form the basis of the conviction of an accused person under section 19(c) for which he was never tried.

State Appeal from the order of Shri J. D. Jain, Magistrate 1st Class, Kandaghat, Camp at Nalagarh, dated the 14th November, 1960, acquitting the respondent.

M. R. SHARMA, ADVOCATE, FOR THE ADVOCATE-GENERAL,
for the Appellant.

J. V. GUPTA, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—These are three acquittal appeals (Criminal Appeals Nos. 142, 143 and 144 of 1961) filed by the State in which the same question of law is involved. The facts are undoubtedly not completely identical but for the purposes of these appeals the essential features are similar with the result that for understanding the real nature of the point involved, I will briefly narrate only the facts of the case, *State v. Ram Chand* (Criminal Appeal No. 142 of 1961).

One Puran, son of Dhonkal died in February, 1956. He had a licence for a muzzle loading gun No. 573. After his death this gun is stated to have been kept or retained by Ram Chand accused respondent in his possession. On 20th June, 1960, Ram Chand produced this gun in the Court of the Sub-Divisional Magistrate, Nalagarh, who directed Ram Chand to deposit the same with the police. The accused was proceeded against under section 19(f) of the Indian Arms Act for having in his possession the gun in question without a licence. The learned Magistrate trying the case was of the view that the conduct of the accused in keeping with him this gun from 8th February, 1956 to 20th June, 1960, did bring his case within the purview of section 19(f) but in view of section 29 of the Indian Arms Act, he acquitted him because previous sanction as contemplated by this section had not been obtained before instituting these proceedings.

At the trial the prosecuting Sub-Inspector cited a decision of a Full Bench of the Allahabad High Court in *Bhai Singh v. The State* (1), where section 29 was struck down as invalid being violative of the rule of equal protection of laws which is incorporated in Article 14 of the Constitution. But the learned Magistrate preferred to follow a decision of the Pepsu High Court in *Chand Singh v. The State* (2), and a decision of the Himachal Pradesh Judicial Commissioner in *Kanhya and another v. The State* (3).

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On appeal the learned counsel for the State read the ratio of the decision of the Allahabad Full Bench but frankly declined to build any argument on the basis of the ratio of this decision. In view of the argument having not been pressed on behalf of the State I do not think it is necessary for me to say anything on the soundness or otherwise of this decision, though, as at present advised, I am not impressed by its soundness, and I speak with respect.

The counsel, however, urged that the admitted facts on the record clearly bring the case of Ram Chand within the mischief of section 19(i) of the Indian Arms Act according to which any one who fails to deposit arms, ammunition, etc., as required by section 16, is liable to be punished with imprisonment for a term which may extend to three years, or with fine, or with both. According to section 16 any person possessing arms, etc., the possession whereof has in consequence of the cancellation or expiry of its licence or exemption or by the issue of a notification under section 15 or otherwise, become unlawful must without unnecessary delay deposit the same either with the officer in charge of the nearest police station or at his option and subject to the prescribed conditions with a licensed dealer. He has contended that admittedly Ram Chand is guilty of failure to deposit the arm in question as required by section 16 and, therefore,

(1) A.I.R. 1960 All. 369.

(2) A.I.R. 1954 Pepsu 132.

(3) A.I.R. 1951 Him. Pra. 35.

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liable to be convicted under section 19(i). Reliance has been placed on section 237, Code of Criminal Procedure, in support of the contention.

This point was also raised in the trial Court but did not find favour with it, for the reason, that in its opinion Ram Chand could not have been charged for this offence under section 236, Criminal Procedure Code, and, therefore, could not be convicted under section 237. This view, according to the appellant's counsel, is based on an erroneous construction of sections 236 and 237. I am inclined to agree with the learned counsel for the appellant that the reason on which the Court below has ruled out section 237 is not quite correct. Nevertheless, I entertain grave doubt if Ram Chand can be convicted of an offence under section 19(i) Indian Arms Act in the present proceedings because on account of the absence of previous sanction, as required by section 29, the institution of the proceedings against him were contrary to law and void. Section 29 lays down a mandate that no proceedings for an offence under section 19(f) committed in the circumstances mentioned therein shall be instituted against any person without the previous sanction of the Magistrate of the district, or in the presidency town, of the Commissioner of Police. Now, if the condition precedent for the initiation of the proceedings is absent, then obviously the entire subsequent proceedings would be illegal and without jurisdiction.

The counsel for the appellant has not been able to place before us any precedent in support of his contention. If the proceedings are contrary to law and without jurisdiction, I find it a little difficult to hold that these proceedings may be considered to be lawful and valid for convicting Ram Chand for an offence under section 19(i), Indian Arms Act, by having resort to section 237, Criminal Procedure Code. Sections 236 and 237, Criminal Procedure Code, constitute one of the exceptions to the rule laid down in section 233, according to which for every distinct offence of which a person is accused there is to be a separate charge and every such charge is to be tried separately. It is not dis-

puted that the accused in the present case was not charged with an offence under section 19(i) of the Indian Arms Act, and in respect of the offence charged, namely, under section 19(f) Indian Arms Act, the proceedings have been instituted without the requisite previous sanction with the result that the proceedings at the trial must be considered to be illegal and without jurisdiction. Without a binding precedent I would feel disinclined, as at present advised, to hold that these proceedings can legally form the basis of a conviction for an offence under section 19(i), Indian Arms Act, for which the accused was never legally tried. Except for a bald assertion the learned counsel for the State too has not been able to offer any convincing argument in support of his submission.

And finally, we have to bear in mind that the matter has come up before us on an acquittal appeal and the offence more or less lies in Ram Chand having retained with himself a gun belonging to his deceased father, of which he (the deceased) had a proper licence during his life-time. On these facts the offence can hardly be considered to be very serious, and I would feel disinclined to interfere on acquittal appeal.

For the reasons given above this appeal fails and is hereby dismissed. The fate of the other two appeals, it is conceded, depends on the decision of this appeal. In the result those two appeals also fail and are hereby dismissed.

D. FALSHAW, C.J.—I agree.

D. Falshaw, C.J.

K.S.K.

APPELLATE CIVIL

Before Harbans Singh, J.

SOHAN SINGH AND OTHERS,—Appellants.

versus

SADHU SINGH AND OTHERS,—Respondents.

Execution First Appeal No, 271 of 1960,

Hindu Law—Widow's estate—Unsecured debts for legal necessity incurred by widow—Whether binding on the

State
v.
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Dua, J.

1962

May, 3rd.