

(1936) 11 AHC CK 0013**Allahabad High Court****Case No:** None

Ram Brich

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Nov. 25, 1936**Citation:** AIR 1937 All 228**Hon'ble Judges:** Iqbal Ahmad, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Iqbal Ahmad, J.

Ram Brich, applicant was convicted by a Magistrate of the First Class u/s 19(f), Arms Act, and was sentenced to six months" rigorous imprisonment and a fine of Rs. 50. On appeal the learned Sessions Judge affirmed the conviction but reduced the sentence of imprisonment from six months to one month and maintained the sentence of fine.

2. On the finding recorded by the Courts below the consideration of the case must be approached on the assumption that a spear-head was, on the search of the house of the applicant, recovered from a room in the occupation of the applicant. In other words the applicant was in possession of a spear-head. The question however remains whether the possession of a spear-head could justify the conviction of the applicant u/s 19(f), Arms Act. It is clear from a perusal of Schedule 2, of the Indian Arms Rules, 1924, that the prohibitions and directions contained in the Arms Act (Act No. 11 of 1878) have no application in the United Provinces to spears, spear-heads, swords, etc. But by the same schedule the Local Government is authorized, by means of a Notification in the local Official Gazette, to retain all or any of the prohibitions and directions contained in the Act in respect of any arms in the case of any class of persons or of any specified area. In pursuance of the power vested in

the Local Government the Governor in Council, by Notification No. 10-N/VIII, dated 9th May 1934, published in the United Provinces Gazette dated 12th May 1934, was pleased to direct that the exclusion from the operation of all the prohibitions and directions contained in the Indian Arms Act was cancelled in the Ghazipur district:

In respect of spears, swords and sword sticks in the possession of all persons other than such persons as were exempted in respect of these weapons...

3. The applicant is a resident of Ghazipur district and was in possession of the spearhead in that district. But it is contended on his behalf that as the said Notification has no reference to spear-heads his conviction is bad in law. In my judgment this contention is well founded and ought to prevail. It is provided by Section 4, Arms Act, that unless there be something repugnant in the subject or context the word "arms" in the Act

includes fire-arms, bayonets, swords, daggers, spears, spear-heads, and bows and arrows, also cannon and parts of arms and machinery for manufacturing arms.

4. The learned Sessions Judge held that as a spear-head is a part of a spear it is included within the term "arms" as used in the Arms Act. The learned Judge, therefore, held that the word "spears" used in the said Notification must be deemed to include spear-heads as well. I am unable to agree with this conclusion of the learned Judge. By using both the words "spears" and "spear-heads" in Section 4 of the Act the legislature clearly intended to differentiate and distinguish between spears and spear heads, otherwise there was no occasion for the use of both the words in the said section. In accordance with that section "arms" includes "parts of arms" and if the legislature intended spear-heads to be taken as parts of spears there was no necessity for introducing the word "spearheads" after the use of the word "spears" in the said section. Barrels are parts of firearms, but the word "barrel" has not been used after the word "fire arms" in Section 4. Further parts of the arms specifically mentioned in Section 4 have not been mentioned in that section. It is, therefore, clear that the legislature in Section 4, enumerated only arms and not parts thereof. It follows that spear-heads cannot within the meaning of that section be taken to be parts of spears. The Notification referred to above does not prohibit the possession of a spear-head in the district of Ghazipur. The word "spear" used in the Notification must be interpreted in the sense in which that word is used in Section 4 of the Act, and as a spear is used in that section in contra, distinction to spearhead, a spear cannot be held to include a spear head. The applicant cannot, therefore, be convicted u/s 19(f), Arms Act.

5. It may be and probably is a fact that the local Government, while prohibiting the possession of spears in the Ghazipur district, intended that the prohibition should extend also to spear-heads, but in view of the interpretation put by me on Section 4, I must hold that the notification as issued does not extend to spear heads. Accordingly I allow this application, set aside the conviction and sentence passed on

Ram Brich and acquit him. Ram Brich need not surrender to his bail. His bail-bonds are cancelled. The fine, if paid will be refunded to him.