(1960) 03 KL CK 0045

High Court Of Kerala

Case No: Criminal Revision Petition No. 236 of 1959

Narayana Kani		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: March 24, 1960

Acts Referred:

- Arms Act, 1959 - Section 19, 29
- Criminal Procedure Code, 1898 (CrPC) - Section 173, 251A

Citation: AIR 1960 Ker 391 : (1960) CriLJ 1602

Hon'ble Judges: S. Velu Pillai, J

Bench: Single Bench

Advocate: M. Krishnan Nair, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Velu Pillai, J.
The prosecutor laid a charge-sheet against the revision petitioner u/s 19(f) of the Indian Arms Act, 1878, referred to hereafter as the Act, for being in unlawful possession of a gun without the requisite licence, He pleaded guilty to the charge against him, u/s 251A(5) of the Criminal Procedure Code and was convicted by the 1st Class Magistrate at Nedumangad and sentenced to undergo simple imprisonment for one month. In the appeal taken by him against the conviction to the Sessions Court at Trivandrum, he raised the contention, that the conviction was illegal, as the prosecution was not supported by the sanction prescribed by Section 29 of the Act. The learned Sessions Judge repelled this contention, holding, that u/s 29 no sanction is necessary.

2. Section 29 of the Act reads as follows : "Where an offence punishable u/s 19, Clause (f) has been, committed within three months from the date on which this Act comes into force in any State, district or place to which Section 32, Clause 2 of Act XXXI of 1860 applies at such, date or where such an offence has been committed in

any part of India not being such a State, district or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town, of the Commissioner of Police."

3. In interpreting the section, the learned Sessions Judge has held, that because the offence had been committed more than three months before the date on which the Act came into force in the State of Kerala, no sanction was necessary. Evidently, the learned Judge applied the first part of Section 29, but failed to note, that it applies only to a State, district or place to which Section 32(2) of Act XXXI of 1860 was applicable at the time the Act came into force, the reason being, that under that provision of the earlier Act, there was power to order "disarmament" of such State, district or place, and therefore a restraint on prosecution for a limited period after the commencement of the Act, might be deemed to be reasonable; but in the present case, the provision in the Act of 1860 was not in force in the State of Kerala at the commencement of the ACT, and the first part of Section 29 has therefore no application. This interpretation of Section 29 is supported by the decision Dhanpat Vs. State, It is the second part of Section 29 that applies, and if so, the prosecution has to be supported by the requisite sanction.

4. But the learned Government pleader stated, that such sanction has been obtained from the Additional District Magistrate, Trivandrum, on the 29th January 1959, before the charge-sheet was laid against the petitioner. The charge-sheet has also made mention of a certain order obtained by the Sub-Inspector of Police who filed the charge-sheet, from the office of the Superintendent of Police. Though -this description is inconclusive, it can and might refer to the sanction obtained by the Superintendent of Police; but it cannot be held, that by pleading guilty, the petitioner had also admitted, that the prosecution was supported by the necessary sanction. There is nothing on record to show, that a copy of the sanction was furnished to the revision, petitioner under the provisions of Section 251-A of the Criminal procedure Code, except a general statement, that copies of documents referred in Section 173, Cri. P. C. have been furnished to him. In these circumstances, the proper course seems to me to be, to quash the conviction and order a recommencement of the proceedings from the inception. The procedure u/s 251-A, Crl. P. C. has to be gone through, after furnishing a copy of the sanction relied on, to the revision petitioner. With these observations, the conviction entered against the revision petitioner is hereby quashed, the sentence is set aside and the case sent back to the Magistrate concerned, to be disposed of in due course of law.