

## Ahmed Hossein Vs The Queen-Empress

**Court:** Calcutta High Court

**Date of Decision:** March 23, 1900

**Acts Referred:** Arms Act, 1959 " Section 19, 20, 25  
Criminal Procedure Code, 1898 (CrPC) " Section 165

**Citation:** (1900) ILR (Cal) 692

**Hon'ble Judges:** Macpherson, J; Francis W. Maclean, J

**Bench:** Division Bench

### Judgement

Francis W. Maclean, K.C.I.E., C.J.

On the 23rd of April 1899, the Assistant Magistrate of Purneah proceeded to search the house of the

prisoner, who appears to be a man of position and means, and took with him two Superintendents of Police, several Inspectors of Police and a

number of constables and chowkidars, the whole constituting, in point of numbers, a small army of about sixty men. Their object was to search for

arms in the house of the prisoner. They reached his house at daybreak; they surrounded the house, went in, and at once arrested the prisoner and

had him photographed. Some of the witnesses say--photographed with a constable holding him by the hand or arm--and then proceeded to search

the house. The Police had no search-warrant, nor is there anything to show upon what charge the prisoner was arrested. The search lasted

practically throughout the day, with the result that the stocks of two guns, some loaded and unloaded gun and revolver cartridges, a ramrod, a box

of percussion caps, and a gun (sic) with reloading implements for cartridges, and some empty powder flas(sic) were found on the premises. The

articles so found must be taken to be arms and ammunition, within the meaning of the Arms Act, XI of 1878, and they must be taken to have been

in the possession of the prisoner within the meaning of Sub-section (f) of Section 19 of that Act. The prisoner was removed in custody.

2. What subsequently took place is involved in some little obscurity. The materials before us do not enable us to say definitely when any

proceedings against the prisoner were first instituted, or whether the sanction required by Section 29 of the Arms Act was given before those

proceedings were instituted or what, in the first instance, was the precise charge made against the prisoner, and the learned Deputy Legal

Remembrancer, who appeared for the Crown, has not been able to enlighten us upon these points. The prisoner, however, appears to have been

kept in custody for nearly a fortnight, until he was released on bail by an order of this Court, about the 12th or 14th of May. Ultimately he was

committed to the Sessions Court at Bhagulpore, and convicted on the 3rd January last of an offence under Sections 19 and 20 of the Arms Act of

1878, and sentenced to six weeks' rigorous imprisonment and a fine of Rs. 500. Both the assessors were for acquitting the prisoner.

3. I must say, I am at a loss in the absence of explanation, to understand the action of the Police in this matter. I do not understand upon what

charge the appellant was arrested, why he was photographed, what right the Police had to photograph him, least of all in custody, or in the

absence of a search-warrant under what authority the search was made. It is not suggested that the search was made u/s 25 of the Arms Act,

though I notice in his questions to the assessors the Sessions Judge puts it as a search u/s 25, whilst in his judgment he treats the search as one

made u/s 165 of the Criminal Procedure Code. No attempt has been made at the Bar to treat the search as one made u/s 25 of the Arms Act, and

the learned Deputy Legal Remembrancer has not been able to assist us in elucidating the reasons for the action of the Police, which appears to me

to have been high-handed and arbitrary. It is equally unfortunate that the prisoner was detained in custody so long and not allowed out on bail, until

he was released on bail by an order of this Court, which indicates clearly that this Court thought it was a case for bail. We have heard no argument

that the search was properly made u/s 165 of the Code of Criminal Procedure or that the arrest was properly made u/s 55 of the same Code.

4. With respect to the question of whether or not any previous sanction had been given u/s 29 of the Arms Act I am not unmindful of the

suggestion that the charge here was, in the first instance, in respect of an alleged offence u/s 20 and not of one u/s 19; but Sections 19 and 20 are

so interwoven that it is difficult to see how an offence can be committed under the first paragraph of Section 20, unless an offence under one of the

enumerated sub-sections in Section 19 has also been committed. It is not suggested, save in the Sessions Judge's questions to the assessors, that

the charge here was an offence under the second paragraph of Section 20 of the Arms Act. Nor could it have been successfully, for the provisions

of Section 25, were not complied with in this case.

5. As regards the charge u/s 20, I entertain a grave doubt whether the evidence is sufficient to justify a conviction under that section, and whether

the first paragraph of that section applies to a case such as the present. The accused is entitled to the benefit of that doubt, and in my opinion the

conviction u/s 20 is not sustainable.

6. The accused, however, must be taken to have had in his possession or, under his control, arms and ammunition as defined by the Arms Act of

1878 within the meaning of Sub-section (f) of Section 19 of that Act, and in my opinion the conviction under that section must be confirmed. I

think, however, that the sentence passed was far too severe, and that under the circumstances of the case, a much more lenient sentence would

have met the justice of the case. I understand that the prisoner has already undergone some days of rigorous imprisonment before he was again

admitted to bail by this Court; and in my opinion, the imprisonment he has already undergone is an ample punishment for the offence which he has

committed. In the result, then, the conviction u/s 20 must be set aside and that u/s 19 must be sustained, and the sentence must be the number of

days of rigorous imprisonment, which the prisoner has already undergone. The prisoner, then, will be at once discharged and the fine of Rs. 500

must be remitted, and, if paid, must be refunded.