

Kalyanchand Gopalchand Gujarati Vs Emperor

Court: Bombay High Court

Date of Decision: April 4, 1922

Acts Referred: Arms Act, 1959 " Section 19

Citation: AIR 1923 Bom 35 : 67 Ind. Cas. 722

Hon'ble Judges: Norman Macleod, C.J; Shah, J

Bench: Division Bench

Judgement

Norman Macleod, C.J.

This is an application in revision made by the petitioner who was convicted by the First Class Magistrate of Yeola

under action 19 of the Indian Arms Act which provides a penalty for the offence of going armed in contravention of the provisions of Section 13.

Section 13 directs that no person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

2. The accused is not a licensee, but his cousin handed over the gun for which he held a license to the accused while proceeding in a marriage

procession. The accused fired some shots during the procession, with the result that some persons were accidentally injured. It is contended that

the license permitted the licensee to go armed in the marriage procession. Clause 4 of the license reads as follows:

The licensee or any retainer acting under this license shall not go armed with any arms covered thereby otherwise than in good faith for the purpose

of apart, protection or display, and save where he is specially authorised in this behalf in any Presidency town or Rangoon by the Commissioner of

Police or in any other place by the District Magistrate or Sub-Divisional Magistrate specially empowered by the Local Government to grant

license, he shall not take any such arms to a fair, religious procession or other public assemblage.

3. The argument is that a marriage procession is not a public assemblage, but it is clear from the terms of the clause that a religious procession is

considered a public assemblage and therefore, the suggestion that because a procession only consists of persons of a particular persuasion, or of

persons invited to a particular ceremony, it is not a public assemblage, cannot be accepted. When a marriage procession emerges from private

premises and goes down the public street, then it is open to the public to join the procession, and the marriage procession becomes a public

assemblage, It seems to me, therefore, that the Magistrate was right in convicting the petitioner u/s 19 of the Indian Arms Act. The application is

rejected.

Shah, J.

4. I agree. It may be that on this particular occasion the gun was taken by the applicant merely for the purpose of display but even then I think that

under the terms of the license, unless he is specially authorised, he is prevented from using it even for that purpose in a public assemblage. It may be

that this was quite innocently done for mere display as it is sometimes done: but whether that is in accordance with the terms of a particular license

or not, must be decided when the point is raised. It is clear on the terms of this license that he could not do it in a marriage procession which was in

the nature of a public assemblage without contravening the terms of the licence.