

Malua Vs. Emperor

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Court : Allahabad

Decided On : Apr-26-1919

Reported in : 51Ind.Cas.208

Judge : Stuart, J.

Appellant : Malua

Respondent : Emperor

Judgement :

Stuart, J.

1. The District Magistrate of Hamirpur has convicted Malua under the provisions of Section 19 of the Indian Arms Act and sentenced him to a fine of Rs 20. The facts are as follows:-Malua is a trolley man on the G. I. P. Railway and has for many years been employed in his spare time by officers on the line as a shikari. On the 2nd of January 1919 Malua was seen by a Police Constable carrying a double-barrelled gun. The Police Constable asked him what right he had to carry the gun. Malua explained that he had been sent by Mr. Barton, Resident Engineer of the Railway, with the gun and some cartridges to track and despatch a sambhar which Mr. Barton had wounded the day before. He substantiated this story absolutely by producing a written authority from Mr. Barton directing him to carry the gun and despatch the sambhar. This was all. For this Malua has been convicted by the District Magistrate and sentenced to a fine of Rs. 20. Had there been any case in law against Malua the prosecution would have been most ill-advised on these facts, and the sentence in no circumstances could be supported. At the most the offence would have been a technical offence not requiring a prosecution. The sentence should never have been more than nominal, had Malua's act constituted an offence. But under the law Malua has committed no offence whatever.

2. It was laid down in this Court in Hurley, In re A.W.N. (1881), 7 ; 2 Ind. Dec. (N.S.) 206 that the servant of an European exempted from the operations of the Arms Act commits no offence by carrying his master's gun and shooting game with that gun with his master's permission. Later it was held by a Bench of this Court in Queen Emprese v. Ganga Din 22 A. 118 ; A.W.N. (1899) 213 ; 9 Ind. Dec. (N.S.) 1108 that in the case of persons exempted from the operations of Sections 13 to 16 of the Aot, such persons would be permitted to send their servants to shoot birds with their weapons. The exemption in the case of the gentleman whose servant was prosecuted in Queen-Empress v. Ganga Din 22 A. 118 ; A.W.N. (1899) 213 ; 9 Ind. Dec. (N.S.) 1108 was under Section 2 of the Exemption Rules. The exemption in Mr. Barton's case is under Section 13 but the principle is exactly the same. So the conviction is bad in law, I, therefore, accept this application, set aside the conviction and direct

that the fine, if paid, be refunded.

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