

JAYARATNE
v.
ATTORNEY-GENERAL

COURT OF APPEAL

ISMAIL, J.

CA 223/81

12TH OCTOBER, 1992.

Criminal Law – Provision of gun – Firearms Ordinance Ss 2(a), 2(b), 22(1), 22(3) (a).

During a search of his residence the appellant showed a gun to the Police and claimed it was a toy gun. The Government Analyst reported that the mechanism of the gun was defective, that a part of it was made of a kitul wood and in its present state could not be used to discharge pellets. It was a component of a gun within the meaning of section 2(b) of the Firearms Ordinance.

Held:

The charge was that the appellant did possess, without licence, a gun within the definition in section 2(a). The charge not having been amended the conviction could not stand.

APPEAL from conviction by the Magistrate of Galle.

Eardley Perera, P.C. with *Mahinda Pinnediya* for accused-appellant.

A. Marikkar for Attorney-General

Cur. adv. vult.

23rd October, 1992.

ISMAIL, J.

The charge against the accused-appellant was that on or about 20.10.79 at No. 11, Bope Road, Gintota, he did possess a gun within the meaning of Section 2(a) of the Firearms Ordinance, and that he did thereby commit an offence punishable under Section 22(3) (a), read with Section 22(1) of the said Ordinance. He was found guilty after trial and was sentenced to a term of 4 months rigorous imprisonment suspended for a period of 5 years.

On the night of 19.10.79, S.I. Seneviratne with a police party searched the residence of the appellant on receiving information that the appellant possessed a gun without a licence. The appellant showed the gun which he possessed saying that it was a toy gun and that it could not be used. The appellant was then taken into custody and proceedings were instituted against him. On 30.10.79 an order was made that the gun be forwarded to the Government Analyst for report as to whether it was a gun within the meaning of Section 2(a) or 2(b) of the Firearms Ordinance.

The Asst. Government Analyst Mr. Mendis, gave evidence at the trial having forwarded his report earlier dated 09.11.79. He stated that the mechanism of this gun was defective, that a part of it was made of "kitul" wood and that in its present state it could not be used to discharge pellets. His view was that it was a component of a gun within the meaning of Section 2(b) of the Firearms Ordinance.

'Gun' for the purposes of the Firearms Ordinance is defined to include:

(2) "(a) any barrelled weapon of any description from which any shot, pellet or other missile can be discharged with sufficient force to penetrate not less than eight strawboards, each of three-sixty-fourth of an inch thickness placed one-half of an inch apart, the first such strawboard being at a distance of fifty feet from the muzzle of the weapon, the plane of the strawboards being perpendicular to the line of fire or

(b) any component part of any such weapon ..."

It was the submission of learned President's Counsel that the learned Magistrate should not have accepted the interpretation of the Assistant Government Analyst, as the Ordinance does not require any component of a gun to be licensed, but only a component of a gun which satisfies the requirement of section 2(a). Having defined a gun as noted above in section 2(A), it proceeds to refer in section 2(b) to a component "of any such weapon." There is merit in this submission. However, it is not necessary for me to express a finding on this matter as the case for the prosecution was specifically that the appellant did possess, without licence, a gun within the definition in

section 2(a). The charge had not been amended even after the evidence of the Assistant Government Analyst. In the circumstances the prosecution had failed to prove the charge against the accused appellant and the conviction cannot therefore stand. The conviction is quashed and the sentence is set aside.

Appeal allowed.
