

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL PETN. 58 OF 2012

Shri Tamal Roy Bardhan,
son of Sri Manik Bardhan,
resident of Math Chowmuhani,
P.S. East Agartala, District: West Tripura

..... **Petitioner**

- Vs -

The State of Tripura

..... **Respondent**

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Ms. H.K. Bhowmik, Advocate

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing : 04.08.2015 and 09.10.2015

Date of judgment & order: 16.12.2015

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

By means of this application under Section 482 of the Cr.P.C., the order dated 12.06.12 delivered in Criminal Revision 11(3)/2011 by the Additional Sessions Judge, Court No. 2, West Tripura, Agartala has been challenged. To place the requisite facts, it will be apposite to state that on the basis of the written ejahar dated 28.07.2009 lodged by one Assistant Sub-Inspector of police,

Jirania P.S. case No. 43 of 2009 under Section 25(i)(a) of the Arms Act was registered and having observed the complicity of the petitioner in the said case he was arrested allegedly with the arms. After the investigation was complete, the final police report chargesheeting the petitioner under Section 25(i)(A), 25(i)(B) and 25(1)(c) of the Arms act was filed. The District Magistrate, West Tripura, Agartala, by his order dated 29.03.2010, Annexure-2 to this petition, after due verification and appreciation of the materials placed before him has accorded sanction under Section 39 of the Arms Act to prosecute the petitioner.

2. At the time of the discussion of the charge the defence contended that no other charge can be framed against the accused beyond Section 25(i)(a). No charge can be framed under Sections 25(1c) and 25(1B) of the Arms Act. The plea that is raised is centred around that for implicating any one under Section 25 (1-c) of the Arms Act, the notification declaring an area as the disturbed area must exist as pre-requisite. As the notification has not been placed with the case records, the charge under the said section cannot be framed. To rebut such submission, the prosecution submitted the copy of the notification bearing No.F.22(2)-PD/2002 issued by the Home Department, Govt. of Tripura. Thus, the Judicial Magistrate First Class by the order dated 16.06.2011 discarded that plea of discharge, observing that:

“After persuing the said notification it is noticed that the alleged P.O. in c/w this case was declared as

disturbed area on the alleged date of occurrence of the incident as per the explanation appended in Sec.25(1-c) of Arms Act.

On the other hand after perusal of the case record and the charge sheet submitted by the I.O. It is also noticed that accd. was found in his possession of Fire arms (9 MM Pistal loaded with 4 rounds of 9 MM ammunition in its magazine) and the accd. also failed to show any license for such possession which clearly invokes Sec. 25(1B)(a) of Arms Act.

Thus as per the case record and the facts and circumstances charges u/s 25(1-B)(a) and u/s 25(1-c) of Arms is clearly established against the accd. Person.

So in my considered opinion charges U/s 25(1B)(a) and U/s (1-c) of Arms may be framed against the accd. Person."

3. Thus, the charge against the petitioner was proposed to be framed under Section 25(1B)(a) and (1-c) of the Arms Act, 1959. Being aggrieved by that order dated 16.06.2011, the petitioner filed a revisional application questioning the legality of the said order, under Section 397 of the Cr.P.C. in the court of the Sessions Judge, West Tripura, Agartala, being CrI.Rev.11(3) of 2011. By the said revision, the same plea was reiterated. But one additional plea was also raised emphasizing that no previous sanction of the District Magistrate was obtained. What is gathered from the records is that the ground of objection raised in the revision petition in the form of additional plea is that even though no specific sanction was granted, the charge was proposed to be framed. The said criminal revision was transferred to the court of Addl. Sessions Judge, Court No.2, West Tripura Agartala. By the judgment and order dated

12.06.2012 the said revisional application was disposed of observing that:

“In my opinion, necessary sanction under Section 39 of the Arms Act is accorded by the District Magistrate, West Tripura to prosecute the accused petitioner. So, I do not find any illegality or any material irregularity in the impugned order. Accordingly, I am in the opinion that this revision petition is devoid of merit and accordingly this revision petition is liable to be dismissed and hence it is dismissed.”

This revision petition under Section 482 of the Cr.P.C. has questioned the legality and propriety of the said judgment and order dated 12.06.2012.

4. Mr. H. K. Bhowmik, learned counsel appearing for the petitioner has submitted that the chargesheet has been filed under Section 25(1a), 25(iB)(a) and (i-c) of the Arms Act. As the sanction was accorded by the District Magistrate only for prosecuting the petitioner under Section 25(ia) of the Arms Act, no charge can be framed under Section 25(1B)(a) and (i-c) of the Arms Act.

5. From a bare reading of the sanction dated 26.03.2010, it would be apparent that the sanction was accorded in respect of the offence under Section 25(1)(a) of the Arms Act. The relevant part of the sanction order which reads as under, is reproduced:

“On the basis of the above facts, a prima-facie case is well established against the accused Tamal Bardhan (32), S/O Sri Manik Bardhan of Math Chowmuhani, PS. East Agartala for keeping illegal arm & ammunitions which is punishable u/s 25(i)(a) of Arms Act.

In view of this, sanction u/s of Arms Act is hereby accorded to prosecute the accused Tamal Bardhan (32), S/O Sri Manik Bardhan of Math Chowmuhani, PS. East Agartala in connection with Jirania PS Case No. 43/09 u/s 25(1)(a) of Arms Act."

6. According the sanction is not merely technical or a mere formality. Section 39 of the Arms Act has been engrafted in the Arms Act for obvious purpose to avoid the frivolous prosecution. Sanction is condition-precedent for launching prosecution against the accused. For purpose of reference Section 39 of the Arms Act, 1959 is extracted here under:

"39. Previous Sanction of the District Magistrate necessary in certain cases - No prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate."

7. To drive his plea, Mr. Bhowmik, learned counsel appearing for the petitioner has referred a decision of the apex court in **Gunwantlal vs. State of Madhya Pradesh** reported in **AIR 1972 SC 1756**. In that case the apex court has observed that:

"Once we hold that the charge is not defective, it cannot be said that it travels beyond the sanction accorded by the District Magistrate under Section 39 of the Arms Act as both of them are in similar terms in that the sanction also refers to the appellant having been allegedly found in possession of and having under his control one revolver without a valid license."

The apex court thereafter has observed as under:

"The decision of the Privy Council in Golak Chand's case is inapplicable to the facts and circumstances of this case. What the Privy Council was considering was a prosecution under Clause 18(2) of the Cotton Cloth and

Yarn Control Order, 1943 for which sanction to prosecute under Clause 23 was required. The sanction did not set out the facts constituting the offence nor did the prosecution prove by extraneous evidence that the necessary facts required for granting sanction were placed before the sanctioning authority. The sanction merely mentioned the names of the persons to be charged and the provision of the Control Order under which they were to be prosecuted. It appears that cases under [Section 195](#) of the Criminal Procedure Code were cited before the Board, which however, as observed by the Lordships do not lay down any principle inconsistent with the views expressed by them and as the sections [of the Code](#) are expressed in language different from that used in Clause 23 of the Control Order and are directed to different objects, it was thought that no useful purpose will be served by an examination of those cases. This Court held in [Madan Mohan v. State of Uttar Pradesh](#) : AIR 1954 SC 637, following the Privy Council case in *Golak Chand* that where facts do not appear on the face of the letter sanctioning prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. [Under the Arms Act](#) all that is required for sanction under [Section 39](#) is, that the person to be prosecuted was found to be in possession of the firearm, the date or dates on which he was So found in possession and the possession of the firearm was without a valid licence. As all the elements are contained in the sanction in this case, it is not an illegal sanction nor can it be said that the charge travels beyond that sanction."

[Emphasis supplied]

8. Mr. Bhowmik, learned counsel has also relied on a decision of the Gauhati High Court in this respect in **Bijon Mahanto and Anr. vs. State of Assam and Anr.**, reported in **(2009) 3 GLR 148**, where the Gauhati High Court has observed that:

"Though it has been alleged in the offence report that the accused-petitioners were found in possession of the arms and ammunitions, the offence report did not seek prosecution of the accused-petitioners for offences allegedly committed under the Arms Act. Even if such a prosecution was sought, such prosecution would have been impermissible in law, for, in the absence of

sanction, as required under Section 39 of the Arms Act, the Court could not have taken cognizance of offences under the Arms Act. It needs to be pointed out that the accused-petitioners, in the light of the FIR, are alleged to have been found in possession of fire-arms or ammunitions in contravention of the provisions of Section 3 and such an offence is punishable under Section 25(1)(B) Arms Act. Essentially, therefore, Section 25(1)(B) prescribes only punishment for an offence, which a person commits by contravening the provisions of Section 3. Section 39 makes it clear that no prosecution can be instituted against any person in respect of any offence committed under Section 3 without previous sanction of the District Magistrate. It is, therefore, crystal clear that the condition precedent for prosecuting the present accused-petitioners for any offence committed under the Arms Act, requisite sanction under Section 39 of the Army Act is necessary.”

9. Mr. R. C. Debnath, learned Addl P.P. appearing for the state while refuting the submission made by Mr. Bhowmik, learned counsel appearing for the petitioner has submitted that if such pedantic interpretation of Section 39 is accepted then such interpretation would render the very object of Section 39 of the Arms Act frustrated. No interpretation can be permitted in the manner that would leave the very provision unworkable. Further reliance has been placed on a decision of the apex court in **State of Rajasthan vs. Tarachand Jain** reported in **1973 CRI. L. J. 1396** where it has been held that the position of law is that the burden of proof that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved

by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

10. Mr. Debnath, learned Addl. P.P. has categorically submitted that from the order dated 26.03.2010, Annexure-2 to this petition it would be apparent that all the materials were placed before the sanctioning authority, the District Magistrate, West Tripura district and thereafter he accorded sanction under Section 39 of the Arms Act. Hence there is no illegality or impropriety in the impugned order.

11. Having regard to the contentions raised by the learned counsel for the parties, what calls for determination is that whether the sanction as accorded by the District Magistrate, West Tripura is adequate enough to frame the charge against the petitioner under Section 25(1B)(a) and (1-c) of the Arms Act or not. Section 39 of the Arms Act has already been reproduced. The said provision speaks that no prosecution shall be instituted against any person in respect of any offence under Section 3 without previous sanction. Section 39 of the Arms Act only for offences covered by Section 3 of the Arms Act. Section 3 catalogues various offences relating to the arms including acquisition, possession, manufacture, sale import export and transport of arms and ammunition. Therefore, those charges as proposed against the petitioner are for the offences for acquisition, possession, transportation of arms of that description

as notified and for committing the offence punishable under Section 25(1-B)(a) and (1-c) of the Arms Act in an area which is declared as the disturbed area. It cannot be denied that while according the sanction to prosecute, it has not been mentioned by the sanctioning authority. But on appreciation of the materials placed before him, the sanctioning authority, the District Magistrate, West Tripura has accorded sanction to prosecute the petitioner in the offences as disclosed by the Jirania PS Case No.43/09 under Section 25(1)(a) of the Arms Act. Thus, the contention of Mr. Bhowmik, learned counsel that sanction was accorded only in respect of the offence punishable Section 25(1)(a) of the Arms Act, cannot be accepted and what is further observed by this court is that the sanction was granted for prosecuting the petitioner for the offence covered by Section 3 of the Arms Act.

12. Moreover, this court finds that this is a second revision filed under the garb of Section 482 of the Cr. P.C. There cannot be any amount of debate that the law has been well settled by now that the jurisdiction under Section 482 of the Cr. P.C. entertaining the Second revision can only be used sparingly not as the matter of rule else provisions of Section 397(3) of the Cr.P.C. would be rendered otiose. For purpose of exercising the jurisdiction as provided under Section 482 of the Cr.P.C., which is inherent in nature, the petitioner has to make out a case that unless the

impugned order is interfered with there would be eminent failure of justice. No such case has been made out in this petition.

13. Having situated thus, this court is of the considered view that this is not a fit case where this court should exercise its jurisdiction as provided under Section 482 of Cr.P.C. That apart, the very challenge is devoid of merits.

14. In the result, this petition stands dismissed.

Send down the LCRs forthwith.

JUDGE

Moumita