

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-893-SB of 2004

Date of Decision: 1.7.2015

Sikander

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Krishan Singh, Advocate
for the appellant(s).

Mr. Rajiv Doon, Assistant Advocate
General, Haryana for the respondent.

Darshan Singh, J.

1. The present appeal has been preferred against the judgment of conviction dated 10.2.2004 passed by the learned Additional Sessions Judge, Panipat vide which the appellant has been held guilty and convicted for the offence punishable under Section 25 of the Arms Act, 1959 (hereinafter referred to as "the Act") and the order of sentence dated 16.2.2004, vide which he has been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 2,000/-. In default of payment of fine, the appellant was further ordered to undergo rigorous imprisonment for a period of three months.
2. As per the prosecution allegations, on 24.12.1998, PW.4 Bhullan Singh, Inspector along with his companion police officials, was

present near the bridge of Namunda canal. The appellant was apprehended with the help of the companion police officials. He was having .315 bore pistol in his right hand along with one live cartridge. The Investigating Officer prepared the sketch of the said pistol. The same was taken into possession along with the live cartridge. The accused could not produce any license for keeping the same in his possession. The Investigating Officer sent a ruqa Ex.PC to the police station on the basis of which the present case was registered. On completion of all the formalities of the investigation and after obtaining the sanction for prosecution from the concerned District Magistrate, the report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") was presented in the Court.

3. The appellant was charge sheeted for the offence punishable under Section 25 of the Act, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as five witnesses.

5. On completion of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he pleaded his false implication.

6. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the trial Court held the appellant guilty and convicted him for the offence punishable under Section 25 of the Act vide the impugned judgment and was ordered to undergo sentence as mentioned in the earlier part of the judgment.

7. Aggrieved against the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

8. Learned counsel for the appellant contends that he does not challenge the conviction of the appellant as recorded by the learned trial Court but the sentence awarded to him is highly excessive. He has been awarded the maximum punishment as provided for the offence. He further contended that the appellant remained in custody for a period of about one year & nine months. Thus, he pleaded for leniency in the matter of sentence.

9. On the other hand, learned State counsel pleaded that the sentence awarded by the learned trial Court is just and appropriate.

10. I have duly considered the aforesaid contentions.

11. Learned counsel for the appellant has not challenged the conviction of the appellant as recorded by the learned trial court. He has simply pleaded for leniency in the matter of sentence. Even otherwise, from the statements of PW.4 Bhullan Singh, Inspector, the Investigating Officer of the case and PW.5 Rattan Singh, the witness of recovery, it is established that the appellant was found in his possession .315 bore country made pistol along with one live cartridge. There is no reason to disbelieve the consistent testimonies of both these witnesses. So, the conviction of the appellant recorded by the learned trial court is well founded. However, I found substance in the contentions raised by learned counsel for the appellant for reduction in the sentence awarded to the appellant. The appellant has been convicted for having in his possession .315 bore country made pistol along with one live cartridge.

The recovery has been effected on 24.12.1998. A period of about 16½ years had elapsed since then. There is no material on record to show that the appellant was a previous convict. As per Section 25(1B) of the Act, the maximum sentence for the offence was three years but it shall not be less than one year. Thus, the maximum sentence provided for the offence has been imposed upon the appellant by the learned trial Court. In view of the facts and circumstances of the case, the appellant certainly deserves leniency in the matter of sentence.

12. As per the custody certificate, available on record, the appellant has already undergone one year three months & 16 days of sentence as on 3.7.2004. His sentence has been suspended vide order dated 15.12.2004. In this way the appellant has already undergone the sentence of one year eight months & 28 days as on 15.12.2004, when his sentence was ordered to be suspended. In this manner, the appellant has already undergone the substantive portion of the sentence. If his sentence is reduced to that of already undergone by him, it will suffice the ends of justice.

13. Thus, keeping in view my aforesaid discussion, the appeal against the conviction of the appellant stands dismissed. However, the order on the quantum of sentence stands modified. The appellant is ordered to undergo the sentence to the period already undergone by him. However, the sentence of fine and the default clause shall remain intact. The amount of fine be deposited with the learned trial Court within a period of one month from the date of this judgment, failing which the appellant shall be liable to undergo the sentence as awarded by the

learned trial Court in default of payment of fine.

14. The appeal stands disposed of in above terms.

(Darshan Singh)
Judge

July 1, 2015

“DK”