

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-2390-SB of 2003

Date of Decision : January 21, 2015

Isak

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Sandeep Verma, Advocate for
Mr. Adish Gupta, Advocate.

Mr. Munish Dev Sharma, Assistant A.G., Haryana.

T.P.S. MANN, J.

The appellant has filed the present appeal for challenging the judgment and order dated 25/27.11.2003 passed by the Additional Sessions Judge, (Ad hoc), Faridabad, whereby he was convicted under Section 25 of the Arms Act (for short 'the Act') and sentenced to undergo imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further imprisonment for a period of three months.

As per the prosecution, the appellant was one of the accused in FIR No.804 dated 10.11.2000 registered at Police Station NIT, Faridabad. In the said case, he was not apprehended at the spot but was, later on, intercepted by Inspector Ranjit Singh on 2.1.2001 when he was sitting in a park in Sector 21-C, Faridabad and formally arrested in the aforementioned FIR. The personal search of the appellant led to recovery of a spring actuated knife from the right pocket of his pant. As he could not produce any licence or permit to possess the same, he was found to have committed an offence under Section 25 of the Act and, accordingly,

FIR No.6 dated 2.1.2001 in that regard was registered at Police Station NIT, Faridabad.

Upon completion of the investigation, the challan was presented. The case was, however, committed to the Court of Sessions, it being an off shoot of the main case, i.e. FIR No. 804 dated 10.11.2000 under Sections 148/149/307/120-B IPC. The appellant was charged for the offence under Section 25 of the Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Inspector Ranjit Singh and PW2 HC Abhay Singh.

When examined under Section 313 Cr.P.C., the appellant pleaded innocence and false implication.

The trial Court, after hearing learned counsel for the parties and perusing the record, convicted and sentenced the appellant, as mentioned above.

After hearing learned counsel for the parties and going through the record of the case, this Court finds that though the recovery of the spring actuated knife was effected from a public place i.e. a park in Sector 21-C, Faridabad yet no independent witness was associated. It has also come on the record that there were *kothies* on the northern side of the park and other habitation towards the western side. Further, PW1 Inspector Ranjit Singh admitted in his cross-examination that he did not call any independent witness to join in the investigation. It is true that the conviction of the accused can be ordered on the testimony of the

official witnesses only and in the present case, the prosecution had examined PW1 Inspector Ranjit Singh and PW2 HC Abhay Singh but when there is material on the file to establish that there was no dearth of independent witnesses at the place from where the recovery is effected, it would not be safe to rely solely on the testimonies of such official witnesses.

According to the prosecution, the appellant was found in possession of spring actuated knife and, thus, violated the notification issued by the Haryana Government on 15.9.1978, which made him liable for committing offence under Section 25 of the Act. However, it is doubtful if the knife recovered from the appellant was spring actuated. In the recovery memo. Ex.PB, it is mentioned that the knife recovered was spring actuated. However, on perusal of the sketch of the knife (Ex.PA) it cannot be said that the knife was spring actuated, as the button/spring meant to open the blade portion of the knife has not been indicated anywhere. Instead, what is depicted is a simple knife having blade of 10½ cms, whereas the weapon's handle measured 12½ cms. In such a situation, the object allegedly recovered from the appellant is to be treated as a simple knife and not a spring actuated knife.

Even the possession of simple knife can bring it within the ambit of Section 25 of the Act but for that the length of the blade of such a knife is required to be longer than 6 inches. Admittedly, the blade portion of the knife measured 10½ cms., which is less than 6 inches. Therefore, the conviction of the appellant under Section 25 of the Act cannot be upheld.

Besides, the appellant already stands acquitted in the main case under Sections 148/149/307/120-B IPC. The present case, being an off shoot of the said case, the conviction of the appellant under Section 25 of the Act cannot be sustained.

The appeal is, accordingly, accepted and the appellant is acquitted of the charge against him. He is on bail. His bail bonds and surety bonds shall stand discharged.

January 21, 2015
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(T.P.S. MANN)
JUDGE