

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Cr.A.No.2215-SB of 2015 (O&M)
DATE OF DECISION : 4.3.2015

Chander and another

APPELLANTS

VERSUS

State of Haryana

RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri Vinod S.Bhardwaj, Advocate for the appellants.

Shri P.S.Chauhan, Additional A.G. Punjab.

MAHESH GROVER, J.

This appeal has been filed against the judgment/order dated 23.10.2003/30.10.2003 of the learned Additional Sessions Judge(Fast Track Court), Bhiwani vide which all the accused were convicted under Section 25 of the Arms Act and sentenced to undergo RI for one year and to pay a fine of Rs.200/- each. However, two of the accused namely Chander and Satyawan are before this

Court questioning their conviction and sentence.

The prosecution case initially was more aggravated as five persons namely Chander, Satyawar, Prem Singh, krishan and Satbir Singh were charged for an offence under Sections 399/402 I.P.C. and Section 25 of the Arms Act. All of them except Satbir Singh have been discharged under Sections 399/402 I.P.C. Satbir Singh was declared a proclaimed offender and he never faced trial.

A raid was conducted on receipt of a secret information that the aforesaid five persons had gathered in an abandoned place near Dera Baba Ghoru Wala at Jui Loharu Road. A team of police officials headed by ASI Maha Singh raided the spot in a private jeep and apprehended all the accused persons. Appellant No.1 was found to be in possession of a .38 bore pistol while appellant No.2 was having a Khukhri and another co-accused was having a spring actuated knife, while one of them was having a Danda.

Since only two appellants are before this Court, it would be imperative to refer to the role attributed to them as noticed above.

A .38 bore pistol was sent for examination to the Armor (PW-8) who opined that the fire-arm was in a working condition and the weapon was received by him in a sealed condition.

The solitary contention raised by the counsel for the petitioner in support of his plea is that no independent witness was enjoined even though the police had received a prior information and gone in a private jeep at a place which was frequented by people and thus, recovery of the weapon itself is doubtful.

Of relevance would be the statement of ASI Maha Singh (PW-2) who has testified that a secret information was received by him upon which he formed a raiding party to apprehend all the accused persons. He has stated that a raid was conducted in a private jeep and an attempt was made to associate people from the public as independent witnesses.

In his cross-examination, he was unable to answer and give

particulars of the jeep or its Driver. Likewise, he did not mention the names of any of the persons who were attempted to be associated with the raid or even recovery for that purpose. This would cast a serious shadow on the prosecution case. Had the police officials mentioned names of the persons who were attempted to be associated, their refusal to do so would have eliminated the argument of the appellants in this regard altogether, but by merely saying that members of the public were attempted to be associated without even remotely mentioning their names, would imply that the police officials had merely paid a lip service to this requirement of law, the observance of which would have gone a long way to establish the authenticity of the recovery.

There is another reason for this Court for not accepting the recovery to be inspiring. The entire case under Sections 399/402 I.P.C. has been shattered and this fact coupled with the fact that no independent witnesses were enjoined, also casts a serious doubt on the entire police/prosecution version.

For the aforesaid reasons, the appeal is accepted and the appellants are acquitted of the charges framed against them.

March 4, 2015
GD

(MAHESH GROVER)
JUDGE