

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRR-2528-2006

Date of Decision: September 9, 2015

Dharambir

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

Present: Mr. Ankush Chowdhary, Advocate,  
for Mr. Tejinder Pal Singh, Advocate,  
for the petitioner.

Mr. Pawan Gaur, DAG, Haryana,  
for the respondent.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | <b>YES</b> |
| 2. | <i>To be referred to the Reporters or not?</i>                               | <b>YES</b> |
| 3. | <i>Whether the judgment should be reported in the Digest?</i>                | <b>YES</b> |

**NARESH KUMAR SANGHI, J. (Oral)**

Challenge in the present criminal revision petition is to the judgment dated 1.12.2006, passed by learned Additional Sessions Judge, Panipat, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable

under Section 25 of the Arms Act, 1959 (for brevity, 'the Arms Act'), recorded by learned Additional Chief Judicial Magistrate, Panipat, was dismissed.

Learned counsel for the petitioner contends that it has no where been proved by an expert that the knife allegedly recovered from the petitioner was spring actuated and attracted the provisions of Section 25 of the Arms Act; the knife alleged to have been recovered from the petitioner was not sealed by the investigating officer; it has no where emerged on record that after recovery of the alleged knife on 3.11.2000, with whom it remained till it was produced in the Court during the deposition of ASI Sultan Singh (PW1); the alleged recovery of knife was effected from the compartment of a passenger train and concededly more than twenty passengers were present in the compartment, but no one was joined as a witness; and that the explanation during cross-examination by the prosecution witnesses that certain passengers were requested to witness the recovery but none of them opted to join, is not sufficient since the prosecution witnesses had failed to disclose the names and addresses of such passengers. He further points out that as per deposition of the prosecution witnesses, police memo (Ex.PD/1) was sent to the police station for registration of the FIR through Constable Pratap Singh, No. 988, and after registration of the case he came back to the investigating

officer at 7:00 p.m., by that time the recovery memo. (Ex.PB), search memo (Ex.PE) and memo of arrest were already prepared, then how number of First Information Report (FIR) appeared on the said documents, which fact would clearly spell out that those documents were prepared while sitting in the police station.

On the other hand, learned counsel for the State submits that the witnesses had specifically deposed that certain persons were requested to witness the recovery but once they had refused then there was no other way with the police officer to force them to become a witness. The prosecution witnesses had deposed that the knife recovered was spring actuated, therefore, there was no necessity for the prosecution to examine an expert in that regard. He further submits that there was no necessity of sealing the knife recovered from the petitioner. He also submits that in view of concurrent findings of both the Courts below, the conviction and sentence of the petitioner be maintained.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

As per prosecution version on 3.11.2000, at 3:20 p.m., ASI Sultan Singh (PW-1), Incharge, Police Post GRP, Panipat, along with his fellow police officials, boarded a train from Samalkha Railway Station. During search, police party noticed that the

petitioner tried to slip away after seeing the police personnel. On suspicion the petitioner was apprehended and it was found that he was traveling without ticket. On the personal search of petitioner, a spring actuated knife (Ex.P1) was recovered from back pocket of his pants, which was taken into possession vide recovery memo (Ex.PB). After preparing sketch (Ex.PA), police memo (Ex.PC) was sent to the Police Station, GRP, Karnal, through Constable Pratap Singh, for registration of the FIR (Ex.PD). Recovery memo, search memo and arrest memo were prepared at the spot.

After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented for prosecution of the petitioner for the offences punishable under Section 25 of the Arms Act and Section 137 of the Railways Act. Finding a *prima facie* case, the petitioner was charged for the above-stated offences, to which he pleaded not guilty and claimed trial.

In order to substantiate its allegations, the prosecution examined ASI Sultan Singh as PW1; HC Sat Parkash as PW2; Constable Pratap Singh as PW3; and ASI Jai Singh as PW4.

After completion of the prosecution evidence, the statement of the petitioner in terms of Section 313, Cr.P.C., was recorded. The petitioner denied the incriminating evidence appearing against him and pleaded innocence. No evidence in defence was led.

After hearing the arguments of counsel for the parties, learned Trial Court acquitted the petitioner of the charge under Section 137 of the Railways Act, but convicted him under Section 25 of the Arms Act and ordered him to undergo rigorous imprisonment for one year besides payment of fine of ₹100/- (rupees one hundred only) and in default thereof to undergo simple imprisonment for five days. The fine was deposited before learned Trial Court.

Dissatisfied with the judgment of conviction and the order of sentence passed by learned Trial Court, the petitioner filed an appeal before the Court of Session, which was dismissed after reducing the rigorous imprisonment for one year to rigorous imprisonment for six months.

There appears to be substance in the arguments of learned counsel for the petitioner when he submitted that despite availability of independent witness none was joined to witness the recovery of alleged knife. It has been conceded by the witnesses that approximately twenty passengers were available in the compartment when the petitioner was nabbed with the alleged knife. It does not stand to reasons that out of about twenty passengers no one would offer himself to become a witness. The prosecution witnesses have even failed to disclose the identity of persons who were requested to witness the recovery of knife. The

knife alleged to have been recovered from the petitioner was not sealed at the spot.

From the perusal of the Trial Court record, it has not come in evidence that after recovery who had retained the knife? It has not come in evidence that after recovery it was produced before the Station House Officer or with the Moharrir Head Constable of the Malkhana of the police station. Concededly, no expert has been produced by the prosecution to say that the knife recovered was spring actuated and it was functional.

This Court is conscious that only on the ground that independent witness was not associated, would not be sufficient to set aside the judgment of conviction of the accused. But keeping in view the attending circumstances viz. the knife was not sealed and that it has not been proved in whose custody the knife remained after recovery, would certainly create doubt with regard to veracity of the prosecution version. The benefit of such doubt will go to petitioner.

As a sequel to the above discussion, this criminal revision petition is accepted. The judgment of conviction and the order of sentence recorded by learned Trial Court and affirmed by learned Appellate Court are set aside. The petitioner, Dharambir, son of Rajinder, resident of Shiv Colony, Samalkha, District Panipat, is acquitted of the charge levelled against him. The fine paid by

the petitioner shall be refunded to him as per norms.

The original records received from learned Courts  
below be sent back forthwith.

**September 9, 2015**  
P Kapoor

**(NARESH KUMAR SANGHI)**  
**JUDGE**