

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CRA-S-1960-SB of 2004.
Date of Decision: 30.11.2016.**

Kulwinder Singh alias Kala

....Appellant.

VERSUS

State of Punjab

....Respondent.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Gaurav Sharma, Advocate for the appellant.

Mr. Neeraj Sharma, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

Appellant Kulwinder Singh was held guilty, convicted and sentenced for commission of offence punishable under Section 25 of the Arms Act, 1959 (for short “the Act”) vide judgment of conviction and order of sentence dated 23.08.2004 recorded by learned Additional Sessions Judge (Adhoc) Fast Track Court, Ludhiana, in case based on First Information Report No.295 dated 11.09.2002 registered at Police Station Focal Point, Ludhiana.

The accusation of the prosecution was that in pursuance of a secret information received on 11.09.2002 by Sub Inspector Dilpreet Singh, a raid was conducted constituting different police parties at the specified place and the appellant alongwith four other persons, who were armed with deadly weapons and were making preparations to commit decoity, were apprehended. The appellant was apprehended by the police party headed by

ASI Joginder Singh and on his personal search, a .315 bore revolver alongwith one live cartridge of the same bore was recovered from his possession and besides registration of a case under Section 399/402, 379/411 of the Indian Penal Code (for short, "IPC") against the appellant and his co-accused, the instant case under Section 25 of the Act was also registered against the appellant.

The appellant was charge-sheeted under Section 25 of the Act, to which he pleaded not guilty. The trial was completed in due process of law. Considering the evidence led by the prosecution and the appellant and the submissions made on behalf of the appellant, learned trial Court convicted the appellant under Section 25 of Act and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for three months.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 23.08.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Gaurav Sharma, learned counsel representing the appellant and Mr. Neeraj Sharma, Assistant Advocate General for the State of Punjab have been heard and record perused.

As per allegation of the prosecution, the appellant alongwith four other persons was apprehended by the police on 11.09.2002 when they were found to be armed with deadly weapons and were making preparations to commit decoity. First Information Report No.294 dated 11.09.2002 under Section 399/402, 379/411 IPC and Section 25 of the Act was registered against the appellant and his co-accused. After trial of the said case, all the

accused including the appellant were acquitted of the charges levelled against them. In other words, the testimony of the police officials, on whom rested the story of the prosecution regarding apprehension/arrest of the appellant at a specified time and place, was disbelieved by the Court. For the said reason, the deposition of the same official witnesses with regard to arrest of the appellant from the alleged place in particular circumstances and then recovery of a .315 bore pistol and a cartridge of similar bore from his possession, cannot be held to be trustworthy.

In addition to the above, it is the case of the prosecution that the secret information, which led to raid by the police, was received by Sub Inspector Dilpreet Singh at 8:40/ 8:45 a.m. The place, from where the appellant and his co-accused were apprehended at about 11:15/11:30 p.m., was a public park. Needless to say that at such hour of the day it was not difficult for the police to join some independent public witness either in the raiding party or atleast at the time of taking personal search of the appellant after his arrest. PW4 ASI Joginder Singh stated that he asked 3-4 persons to join the police party but they did not do so on one pretext or the other. He admitted that the names of those persons were not mentioned in the case diary by him. His explanation only shows that independent public witnesses were available to the police but they were intentionally not joined in investigation. On that ground also, the testimony of the police officials is rendered doubtful.

Otherwise also, from the evidence adduced by the prosecution a strong doubt arises with regard to recovery as well as identity of the case property i.e. the pistol and the cartridge allegedly recovered from the appellant. PW3 Constable-II Buta Singh admitted that the revolver

produced in the Court was in a torn cloth and did not bear any seal. The serial number with date, month and year of Register No.19 necessary for identifying the case property to relate the same with a particular case was admittedly not mentioned on the parcel/ the pistol produced in the Court. That falsifies the testimony of PW4 Joginder Singh ASI that he had prepared a parcel of the pistol and the cartridge recovered from the appellant and had sealed the same with seal bearing letters 'JS'. PW1 Head Constable Prem Lal, who mechanically tested the pistol, stated that after examination of the pistol he had repacked the same in a sealed parcel and had affixed the seal bearing impression 'IJS' on the parcel. However, as already mentioned above, the pistol produced in the Court neither had the parcel cover with seal 'JS' affixed by the Investigation Officer nor the parcel cover having seal 'IJS' allegedly affixed by the armourer.

As a consequence to the above discussion, I conclude that the evidence of the prosecution is not at all consistent, cogent and worth reliance. Finding that the prosecution had failed to prove its charge against the appellant beyond the shadow of doubt, the appeal is accepted, the judgment of conviction and order of sentence dated 23.08.2004 recorded against the appellant are set aside and the appellant stands acquitted of the charge levelled against him. His bail/ surety bonds stand discharged.

(SNEH PRASHAR)
JUDGE

30.11.2016.
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes