

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-291-SB of 2004

DATE OF DECISION: JANUARY 27, 2016

PIARA SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. L.S.SIDHU, ADVOCATE FOR THE APPELLANT.
MR. PREMJEET SINGH HUNDAL, AAG, PUNJAB.

M. JEYAPPAUL, J.

1. Accused Piara Singh was convicted for the offence under Section 27 of the Arms Act, 1959 and was sentenced to undergo 3 years R.I. and to pay a fine of ₹1500/- and in default, to undergo a further R.I. for 9 months. Aggrieved by the above judgement of conviction and sentence passed by the trial Court, accused Piara Singh has preferred the present appeal.

2. Learned counsel appearing for the appellant vehemently submitted referring to Section 27 of the Arms Act, 1959 that no punishment can be awarded for any misuse of the licenced gun under Section 27 read with Section 5 of the Arms Act, 1959. The Court brought to the notice of learned AAG, Punjab the rider found under Section 5(1)(b) of the Act, namely, “unless he holds in this behalf a licence”. He unambiguously admitted the position of law that if a licenced gun was misused, it might

have attracted the unamended penal provision under Section 27 of the Arms Act, 1959 but said penal provision is not attracted after an amendment was introduced to Section 27 of said Act by Act 42 of 1988.

3. Though the legal position was thus, admitted, let me restate the position of law with some clarity. For the sake of convenience, let me first refer to the extract of the old provision under Section 27 of the Arms Act, 1959 which reads as follows:-

*“27. **Punishment for possessing arms, etc. with intent to use them for unlawful purpose.**- Whoever has in his possession any arms or ammunition with intent to use the same for any unlawful purpose or to enable any other person to use the same for any unlawful purpose shall, whether such unlawful purpose has been carried into effect or not, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.”*

4. As per the above old provision under Section 27 of the Act even if an unlawful act intended was not carried out, mere possession of arms and ammunitions with an intention to use it for any unlawful activity attracted punishment thereunder. The question that survives for consideration is whether under the new penal provision under Section 27 of the Arms Act which was inserted as per Act 42 of 1988 w.e.f. 27.5.1988, misuse of licenced weapon would invite punishment.

5. For better appreciation of the points involved of this appeal, let me reproduce hereinbelow firstly the amended provision under Section 27

and thereafter, Section 5(1) of the Arms Act, 1959:-

*“27. **Punishment for using arms, etc.**-(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.”

*“5. **Licence for manufacture, sale, etc. of arms and ammunition.**-[(1)] No person shall-*

(a) [use, manufacture], sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the

Act and the rules made thereunder.”

6. Under the old Provision, possession of weapon to carry on any unlawful activity was punishable. But the new provision under Section 27 of the Act speaks of punishment only in cases where there is a contravention of the provision under Section 5 of the Act. Section 5 of the Act as extracted above prohibits use of unlicensed fire arm. Nothing has been adverted to under Section 5 of the Act as regards the penal consequences of the misuse of the licensed fire arm. In other words, Section 5(1) of the Act makes it crystal clear that use of licensed fire arm does not expose the licence holder to any offence, but if the fire arm was used by the person without holding any licence, he will face the penal consequences adumbrated under Section 27 read with Section 5 of the Arms Act, 1959.

7. Use of the fire arm for unlawful purpose under the scheme of unamended provision under Section 27 was dealt in **Karamjit Singh vs. State of Punjab, (2009) 7 SCC 178**. In other words, the above ratio will not apply to the amended penal provision under Section 27 of the Arms Act w.e.f. 27.5.1988

8. The Hon'ble Supreme Court in **Deomuni Sharma vs. State of Jharkhand, 2009(3) AICLR 539**, has held as follows:-

“17. For inviting conviction under Section 27 of the Arms Act, it has to be proved that the fire arm has been used in contravention of Section 5 or Section 7 of the Arms Act. Since it was a licensed gun, there was no question of Section 7 coming in. Insofar as Section 5 is concerned, we do not think

that an act on the part of the accused in firing in the air to scare the aggressors would come within the mischief of Section 5(1) of the Arms Act. Therefore, the appellant is liable to be acquitted even of the offence under Section 27 of the Arms Act.”

9. It has been made clear that unless a contravention under Section 5 of the Arms Act was established, the question of convicting the accused under Section 27 of the Arms Act does not arise. It has been further held that opening fire in the area to scare the aggressors does not fall under the mischief of Section 5 of the Arms Act.

10. This Court has an occasion to deal with a similar issue in **Puran Chand and others vs. State of Haryana, Crl.A. No.S-1505-SB of 2003 decided on 17.2.2014.** Relying upon the decision of the Hon'ble Supreme Court in **Gyasuddin Khan @ Md. Gyasuddin Khan vs. State of Bihar, (2003) 12 SCC 516,** it was held by this Court in **Puran Chand** (supra) as follows:-

“22. The State counsel could not refute the contention that the said weapon has not been used in violation of Section 5 of the Act. It is not disputed during the course of arguments that the weapon recovered in the present case is a licenced weapon. So, the net result of the above said discussion is that the argument advanced by counsel for the appellant to the effect that appellant cannot be convicted under Section 27 of the Arms Act carries weight and has to be accepted.”

11. As per the unamended provision under Section 27 of the Arms

Act, 1959, possession of the weapon to commit illegal activity by the licenced holder attracts punishment thereunder. After Section 27 of the Arms Act was amended w.e.f. 27.5.1988, mere misuse of the licenced gun by licence holder does not attract any penal consequence. If any fire arm was misused by a person without holding any licence, he is answerable to the penal consequences under Section 27 read with Section 5 of the Arms Act, 1959.

12. Coming to the factual matrix of the instant case, it is found that the appellant who was a licence holder of .12 bore gun had misused the same by opening fire and caused injury. He will be punished for the offence he committed under the scheme of Indian Penal Code as a consequence of misuse of the licenced weapon. But for the mere misuse of the licenced weapon, he cannot be punished under Section 27 read with Section 5 of the Arms Act.

13. In view of the above, setting aside the judgement of conviction and sentence passed by the trial Court under Section 27 of the Arms Act against the accused, the appeal stands allowed.

January 27, 2016
Gulati

(M. JEYAPPAUL)
JUDGE