

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-333-SB of 2004
Date of Decision : September 14, 2016

Ashok Kumar @ Patwari

....Appellant

VERSUS

State of Punjab

....Respondent

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

Present : Mr. Vishwas Arora, Advocate for
Mr. Aman Kashyap, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant, namely, Ashok Kumar @ Patwari was tried for committing the offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 24.12.2003, learned Additional Sessions Judge, (Fast Track Court), Kapurthala convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for three years and to pay an amount of Rs.1,000/- as fine and in default thereof, to undergo further rigorous imprisonment for one month. The sentence awarded in this case was ordered to run concurrently with the one awarded in the main case FIR No.1 dated 1.1.2003, Police Station Bholath. The period of detention during investigation or trial was ordered to be set off against the substantive sentence imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed

the present appeal, which was admitted on 12.2.2004. Subsequently, vide order dated 17.9.2004, this Court suspended his sentence of imprisonment during the pendency of the appeal. However, he could not avail the benefit of the said order immediately on account of some mistake in the memo of parties, which mistake came to be rectified by this Court vide order dated 31.1.2005.

The case of the prosecution, in nutshell, is that after being apprehended in case FIR No.1 dated 1.1.2003 of Police Station Bholath, under Sections 399 and 402 IPC, the appellant was searched and was found in possession of .12 bore country made pistol, which was unloaded and a live cartridge was taken out of the same. Two live cartridges were also recovered from the back pocket of his pant. He could not produce any licence and, accordingly, found to have committed offence under Section 25 of the Arms Act. Accordingly, FIR No.3 dated 1.1.2003 came to be registered against him at Police Station Bholath, under Section 25 of the Arms Act.

At the trial of the case, the prosecution examined PW1 HC Manmohan Singh, Armourer; PW2 Constable Jasbir Singh; PW3 Raj Kumar, Ahlmad; PW4 SI Gurwinder Singh; PW5 MHC Manjit Singh and PW6 ASI Joginder Singh.

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

In his defence, the appellant examined DW1 Ranbir Singh.

The trial Court, after hearing learned counsel for the parties

and on going through the record, believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

After hearing learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that PW6 ASI Joginder Singh and PW2 Constable Jasbir Singh have proved the manner in which the recovery of country made pistol and live cartridges was effected from the person of the appellant. Both these material witnesses were cross-examined at length by learned defence counsel who could not elicit any material to demolish the prosecution case. Merely because no independent witness was joined in the police party is not sufficient to disbelieve the prosecution case.

PW1 HC Manmohan Singh, Armourer who had tested the country made pistol, found it to be in working condition and fit for firing.

In view of the above, no case is made out for any interference in the conviction of the appellant under Section 25 of the Arms Act.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than 13½ years. It is pleaded on his behalf that apart from the present case and the case arising out of FIR No.1 dated 1.1.2003, Police Station Bholath, which is the main case, he is not involved or convicted in any other criminal case. Out of the sentence of three years imposed upon him, he has already undergone a period of more than 1 year and 3 months. Prayer has, accordingly, been made for setting aside his remaining sentence of imprisonment.

As per the custody certificate already brought on record by the learned State counsel, the appellant has already undergone an actual period of 1 year, 3 months and 23 days.

After hearing learned counsel for the parties, this Court finds that no useful purpose would be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice would be suitably met if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 25 of the Arms Act is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.1,000/- is, however, enhanced to Rs.3,000/- and in default thereof, he shall undergo rigorous imprisonment for three months. The sentence of imprisonment awarded to him in this case shall run concurrently with the sentence of imprisonment in the main case FIR No.1, dated 1.1.2003, Police Station Bholath.

The appeal is, accordingly, disposed of.

September 14, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No