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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-533 of 2007
Date of Decision : August 17th, 2016

Gurcharan Singh alias Charna Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Dhirinder Chopra , Advocate,
for the petitioner.

Mr.Yogesh Kumar Gupta, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present revision is directed against the judgment of conviction and
order of sentence dated 03.08.2004 passed by learned Judicial Magistrate 1st
Class, Moga, whereby the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 25 of Arms Act 1959 [for short “the Act”].	to undergo Rigorous Imprisonment for a period of one year and to pay a fine of ₹ 2000/-.	To further undergo RI for one month.

2. The appeal filed by the petitioner was dismissed by learned
Additional Sessions Judge, Moga, vide judgment dated 07.03.2007.

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3. Relevant facts of the case; that on 10.9.2001, Jasbir Singh, Sub Inspector alongwith other police officials were on patrolling duty in the area of Village Jhandeana Sharki to Nathuwala Jadid and the petitioner was intercepted. On seeing the police party, the petitioner tried to retrieve his steps and on suspicion he was apprehended. On his personal search, a .12 bore countrymade pistol along with two live cartridges were recovered from him and the petitioner could not produce any license for having possession of the same. The said pistol along with live cartridges were converted into parcel and were taken into police custody.

4. After completion of investigation proceedings, challan was presented in the Court for trial.

5. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of statement of prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution version and the defence evidence on record, held the petitioner guilty and convicted him for commission of offence and sentenced him vide 3.8.2004 as detailed in para No.1 above. The petitioner preferred appeal before learned Additional Sessions Judge, Moga and the same was dismissed vide judgment dated 07.03.2007.

6. Aggrieved of passing of judgments of conviction and order of sentence, the petitioner is before this Court by way of present revision.

7. Learned counsel for the petitioner submitted that there is

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absolutely no evidence that the Armourer had test fired the weapon allegedly recovered from the possession of the petitioner. More so, no independent witness was joined. There is no evidence that the case property remained intact from the date of recovery till the report submitted by the Armourer, SI Tara Singh [PW-3].

8. Learned State counsel submitted that the alleged recovery was effected from the possession of the accused in the presence of witnesses who have well-stood by the test of cross-examination. PW-3, Sub Inspector Tara Chand has been examined as Expert witness who has submitted the report that the pistol was in working condition. So, both the Courts below have rightly relied upon the material and evidence available on the file. The present revision petition is without any merit and the same be dismissed.

9. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have not considered the most important fact of the case that the petitioner-accused was facing trial for having possession of a countrymade pistol of . 12 bore and two live cartridges. During process of the trial, SI Tara Singh, Armourer was examined as PW-3 and he had admitted that he had not test-fired the weapon so as to make a report that the pistol was in working condition and in the absence of that, no offence is made out against the petitioner. More so, Investigating Officer, Jasbir Singh [PW-5] as well SI Jagjit Singh [PW-1] no where deposed that the alleged weapon and cartridges were kept in safe custody. This fact assumes much significance in

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light of the fact that no independent witness was joined by the police party despite the fact that recovery was effected at a public place which was open to one and all.

10. In this case, the most important evidence is the testimony of Tara Singh, PW-3, who has said in so many words that he had submitted the report without test-fire. Similar matter was before this Court in **Bhuptej Pal Singh Vs. State of Punjab**, 2014(1) RCR (Criminal) 24, P&H where the alleged recovery was of country-made revolver and four live cartridges, but the same were not test-fired. In that case, this Court was of the considered view that in the absence of such a statement from the Armourer, the alleged offence against the accused cannot be said to have been proved as per law. There has to be a positive evidence that the pistol was in working condition and that the cartridges were alive. Mere saying by the Armourer that he has checked the same with his tools or to give his opinion that the same was in working condition and the cartridges were live, is not sufficient so as to convict a person for commission of offence under Section 25 of the Arms Act. The Courts below have not considered this important legal aspect in this case. The prosecution has failed to bring home the guilt of the petitioner for the offence punishable under Section 25 of the Arms Act, therefore, he deserves acquittal.

11. Resultantly, the present revision petition is allowed. The impugned judgments of conviction and order of sentence passed by the Courts below against the petitioner, are set aside and the petitioner is

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acquitted of the charge levelled against him. The amount of fine, if deposited, be returned to him in accordance with law.

Sd/-
(SHEKHER DHAWAN)
JUDGE

August 17th, 2016
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Whether speaking/reasoned : Yes
Whether Reportable : Yes