

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Revision 1515 of 2012
Date of Decision : April 29, 2016

Ajay @ Bhura

.....Petitioner

VERSUS

State of Haryana

.....Respondent

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

Present : Ms. Deepa Jain, Advocate for
Mr. Yash Dev Kaushik, Advocate

Mr. Dhruv Dayal, Deputy A.G., Haryana

T.P.S. MANN, J. (Oral)

The petitioner was tried for committing the offence punishable under Section 25 of the Arms Act for being found in possession of a country made pistol of .315 bore loaded with one live cartridge. Vide judgment and order dated 1/2.6.2011, learned Judicial Magistrate 1st Class, Faridabad convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-. In default of payment of fine, he was required to undergo simple imprisonment for a period of one month.

In order to challenge his conviction and sentence, the petitioner filed an appeal but the same was dismissed by learned Additional Sessions Judge, Faridabad vide judgment dated

25.4.2012. Hence, the present revision in which he is on bail.

The case of the prosecution, in nutshell, is that on 2.8.2007, ASI Jit Singh alongwith his subordinate staff was present at Bus Stand Ballabgarh in connection with patrolling and crime detection duty. He saw a youth coming from the side of Sohna turn and on seeing the police party, he took turn towards the side from which he was coming and started walking briskly. On the basis of suspicion, he was apprehended. On inquiry, he disclosed his name as Ajay @ Bhura. The search of right pocket of his pant led to recovery of a country made pistol of .315 bore loaded with one live cartridge of the same bore. As the petitioner could not produce any licence or permit to carry the pistol, he was booked under Section 25 of the Arms Act vide FIR No. 386 dated 2.8.2007 registered at Police Station City, Ballabgarh.

At the trial of the case, the prosecution examined PW-1 Virender Singh, PW-2 ASI Dharambir, PW-3 ASI Jit Singh and PW-4 Bijender Kumar, Ahlmad. Constable Suresh Kumar, SI Bhagwan and Inspector/SHO Om Parkash were given up by learned APP being unnecessary vide his statement dated 22.4.2010.

When examined under Section 313 Cr.P.C., the petitioner pleaded his false implication and denied all the allegations levelled against him.

The trial Court while accepting the prosecution

version, convicted and sentenced the petitioner, as mentioned above. The said verdict was upheld by the lower appellate Court while dismissing the appeal filed by him.

Learned counsel for the petitioner has submitted that once ASI Jit Singh had effected the recovery of the pistol and the live cartridge from the petitioner, he could not have carried on with the investigation of the case. It is also submitted that the prosecution has not been able to prove the identity of the petitioner. It is further submitted that no independent witness was examined by the prosecution in support of its case.

Having heard learned counsel for the parties and on going through the impugned judgments passed by the Courts below, this Court finds that once PW3 ASI Jit Singh had effected the recovery of the pistol and the live cartridge from the petitioner, he could very well proceed with the investigation of the case. Even otherwise nothing more was required to be done during the investigation of the case as the petitioner had already been apprehended and the pistol and the live cartridge recovered from his possession for which he could not produce any licence or permit and, thus, liable for committing the offence punishable under Section 25 of the Arms Act. Further, the testimony of PW3 ASI Jit Singh is duly corroborated by PW2 ASI Dharambir, who was present at the time of apprehension of the petitioner and

conducting of his search leading to recovery of the pistol and the live cartridge. As regards the identity, it may be noticed that the petitioner was apprehended at the spot itself and on query being put by ASI Jit Singh, he had disclosed his identity i.e. his name, parentage and address. Thus, no fault can be found in the prosecution case regarding the identity of the petitioner.

Coming to the arguments raised by learned counsel for the petitioner that no independent corroboration has been sought by the prosecution, suffice it to state that no material has been brought on record by the defence either while conducting the cross-examination of the prosecution witnesses or at the time of his examination under Section 313 Cr.P.C. as well as when he was given an opportunity to lead defence evidence to show that the police officials were inimical towards him. Moreover, it is generally noticed that independent witnesses are reluctant to join in the investigation. Under these circumstances, no benefit can be extended to the petitioner.

In view of the above, this Court has no other option but to hold that the petitioner has been rightly convicted for committing the offence under Section 25 of the Arms Act.

As regards the quantum of sentence, it may be noticed that the petitioner is facing the agony of criminal prosecution for the last more than eight years. When he was

examined by the trial Court under Section 248 Cr.P.C., he had pleaded that he was a poor person and sole bread winner of his family which also included his old parents. As per the custody certificate produced by the learned State counsel, the petitioner has already undergone an actual sentence of six months and twenty two days. He has also earned remissions of ten days. In all, he has served a period of seven months and two days out of the sentence of one year imposed upon him. He is also not shown to be either involved or convicted in any other case.

Offence under Section 25 of the Arms Act in respect of recovery of illicit weapon from the culprit is punishable with imprisonment for a term which shall not be less than one year but it may extend to three years. However, the Court, for any adequate and special reasons to be recorded in the judgment, may impose a sentence of imprisonment for a term of less than one year. The petitioner has already undergone more than half of the sentence of imprisonment imposed upon him. The reasons given above are adequate and special which impel this Court to impose a sentence for a term of less than one year.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the petitioner need not be sent behind the bars for undergoing the remaining sentence of imprisonment imposed upon him. Ends of

justice would be amply met if his sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.500/- imposed upon him can be suitably enhanced.

Resultantly, the conviction of the petitioner under Section 25 of the Arms Act is maintained. His substantive sentence of imprisonment is reduced to the one already undergone by him. However, the sentence of fine of Rs. 500/- is enhanced to Rs. 5,000/- and in default of the same, he shall undergo simple imprisonment for three months.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, the revision fails and is, therefore, dismissed.

April 29, 2016
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(T.P.S. MANN)
JUDGE