

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

CRR No. 2058 of 2013

Date of decision : December 06, 2016

Davender

..... Petitioner

v.

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Rajesh Khandelwal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG Haryana

Ajay Tewari, J (Oral)

This revision petition has been filed against the concurrent conviction of the petitioner under Section 25 of the Arms Act.

Brief facts are that on 7.5.2010 the petitioner was apprehended and a pistol of .32 bore with two live cartridges was recovered from him. After conclusion of the trial, he was convicted under Section 25 of the Arms Act and was sentenced to undergo RI for one year.

On 4.7.2013, the following order was passed :-

“ Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court in 2003 Supreme Court cases (Crl) 1037, State of A.P vs S.Appa Rao and others, to submit that evidence of testing of a firearm is necessary to prove that it was a weapon falling within any of the categories mentioned

in Section 5. In the present case, as per the contention of learned counsel, the Armourer, who had appeared as PW3, simply stated that the mechanism of the pistol was in serviceable condition, but did not say anything to the effect that he had actually tested it, or on what basis he certified it to be so.

Notice of motion.

On the asking of the Court, Mr. GS Sandhu, AAG Haryana, accepts notice on behalf of the respondent.

Adjourned to 12.7.2013.”

In support of the above proposition, counsel for the petitioner has also relied upon decisions of the Supreme Court in Jagjit Singh v. State of Punjab (1994) 4 SCC 726 and Manoj Kumar Achhelal Brahman v. State of Gujarat (1998) 2 SCC 354.

Counsel for the respondent is not in a position to cite any contrary judgment.

In these circumstances, it has to be held that the prosecution was not able to prove that the object recovered was a working weapon so as to come within the purview of the Arms Act. Consequently, this petition is allowed, the judgments of conviction passed by the Courts below are set aside, and the petitioner is acquitted of the charge framed against him.

December 06, 2016

`kk'

**Whether speaking/reasoned:
Whether Reportable:**

**(AJAY TEWARI)
JUDGE**

**Yes/No
Yes/No**