

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

Criminal Revision No.1364 of 2016 (O&M).
Decided on:-May 30, 2016.

Gurjit Singh alias Makhan.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Argued by:- Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 16.11.2015 passed by learned Additional Sessions Judge, Sangrur whereby his appeal against judgment of conviction and order of sentence dated 2.5.2015 passed by learned Sub Divisional Judicial Magistrate, Sunam in case FIR No.52 dated 3.7.2011 under Section 25 of the Arms Act, 1959 (for short, the Act) registered at Police Station Sadar Sunam, District Sangrur, was dismissed.

Vide judgment dated 2.5.2015, learned Magistrate held the petitioner guilty under Section 25 of the Act and convicted him for the said

offence. Vide separate order, he was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment thereof, to further undergo rigorous imprisonment for one month.

Briefly stated, case of the prosecution is that on 3.7.2011, the police party headed by Constable Basant Singh was on patrolling duty from village Kular Khurd to Chathe Nakte in a private vehicle. At about 4.30 PM when they reached near power house outside village Kular Khurd, the petitioner-accused was noticed coming from the opposite side. On seeing the police party, he got scared and tried to recede back. He was apprehended by the police party on the basis of suspicion. On questioning, he disclosed his name as Gurjit Singh alias Makhan. During his personal search, one .315 bore country-made pistol was recovered from the right pocket of his jeans/trousers. The pistol was unloaded and one live cartridge of .315 bore was recovered from it. Another live cartridge of .315 bore was recovered from the left pocket of jeans/trousers of the accused.

The petitioner-accused failed to produce any licence or permit in his favour authorising legal possession of the weapon and cartridges. Separate recovery memo of the weapon and cartridges was prepared and the aforesaid FIR was registered against the petitioner.

After completion of investigation, Challan was prepared and presented in the Court. The petitioner-accused was supplied with the copy of police report and other documents appended therewith so as to meet the

requirement as provided under Section 207 Cr.PC, free of costs.

Finding prima-facie case against the petitioner-accused, he was charge-sheeted under Section 25 of the Act to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined investigating officer HC Basant Singh as PW3, recovery witnesses HC Malkit Singh as PW4 and C Ganda Singh as PW7, MHC Suresh Kumar as PW2, HC Randhir Singh as PW5, Avtar Singh Junior Assistant from the office of ADC, Sangrur as PW1 and again as PW6. The witness, namely, SI Surinderpal Singh was given by the APP for the State.

Statement of the petitioner-accused was recorded under Section 313 Cr.PC and claimed false implication. He did not examine any witness in his defence.

Vide judgment dated 2.5.2015, learned trial Court formulated the following point for determination:

“Whether on 03.07.2011, at about 4.30 PM, in the area of village Kular Khurd, accused Gurjit Singh @ Makhan was found in possession of one .315 bore country-made pistol with 2 live cartridges of the same, without having any legal and valid license or permit in his favour?”

The trial Court convicted and sentenced the petitioner-accused in the manner as mentioned hereinabove.

Feeling aggrieved, the petitioner-accused filed an appeal before

the Court of Session, but the same was dismissed by learned Additional Sessions Judge, Sangrur vide judgment dated 16.11.2015.

It is in the aforesaid circumstances, the present revision petition has been filed.

Learned counsel for the petitioner has argued that all the witnesses of prosecution are police personnel and the presence of the police personnel was highly doubtful. It is highly improbable that a police party would be put on patrolling duty in a private vehicle. He has further argued that though HC Basant Singh, HC Malkit Singh and Constable Ganda Singh were stated to be on patrolling duty, but they have not stated that in what circumstances, they opted to be on patrol duty without the Government vehicle. He has further contended that the statements made by the prosecution witnesses, if analysed minutely, it is clear that they were not on secret information and, rather were on routine patrol duty. Therefore, it is beyond imagination that on a routine police duty, the patrolling party will use private vehicle.

Learned counsel for the petitioner has placed reliance upon a judgment of this Court in ***Ranbir Singh Versus State of Haryana 2001(1) RCR (Criminal) 674*** to contend that when the police party travelled to a place of recovery in a private jeep and driver of jeep not examined, the evidence brought on record by the police to prove its presence at the place of recovery is highly improbable. He has prayed that in these circumstances,

the impugned judgments of learned Courts below deserve to be set aside and the petitioner-accused be acquitted of the charge levelled against him.

On the other hand, learned State counsel has argued that apart from the fact that the revisional jurisdiction of this Court is very limited, there is no contradiction in the statements made by the prosecution witnesses. Merely because the patrolling party was on a private vehicle, it cannot be held that they were not on patrolling duty.

I have heard learned counsel for the parties.

The case of the prosecution in nutshell is that the police party was on patrolling duty in a private vehicle. But neither the details of private vehicle has been brought on record nor the owner or its driver was examined in support of the case of prosecution, so as to make out a case that the private vehicle was on patrolling duty and was at the disposal of police party. No such detail of the private vehicle is coming forward. It is not the pleaded case of the prosecution that the police party acted on the basis of secret information and in order to maintain secrecy, they were on patrolling duty in the private vehicle, whereas the pleaded case of prosecution is that patrolling party was on routine patrolling duty.

This Court has gone through the judgment of ***Ranbir Singh's case (supra)*** wherein the accused was acquitted as driver of the jeep was not examined so as to prove the presence of the police party at the place of recovery. The relevant observation as referred in para No.5 of the said

judgment is reproduced as under:

“5. However, the main factor in every criminal case remains to be that the story of the prosecution must be inspiring truthfulness in the testimony of the witnesses relied upon. In the case in hand, Vakil Chand, the driver of the private jeep in which the police party was patrolling did not come into the witness box. The police did not record any sufficient statements to prove their own presence on the scene where the accused were allegedly captured. The Investigating Officer SI Badri Parshad PW2 did not make any effort to find out the source of the poppy husk where from it was received and its destination. No house search of any of the appellant was effected. The police party would have been visible to the four wheeler and there was no possibility that they would have tried to come near the place if the police party had been standing there. One of the accused-appellants allegedly escaped from the scene of occurrence. In the given circumstances it would be impossible for one person to run away in the face of duly armed police officials being present. The police had allegedly a jeep with them and the police personnel on the spot must be physically fit to perform their function efficiently and they could have easily chased the offender but they did not do so. This reflects a clear manipulation of the story on the part of the Investigating Officer. The police party did not join any independent person. In fact the police party did not know any of the appellants-accused. Vakil Chand is not produced to say that he disclosed the name of Ranbir Singh. It has come in the evidence of ASI Balwan Singh PW1 that some people passed nearby going to their fields but they did not join any one of them in the

investigation. Wherefrom they did bring weighing scales and all the material for conducting investigation remain obscure. This is totally one-sided story of the prosecution. It is not sure that the specimen seal was also deposited within the MHC or was retained there.”

In the present case also, no other independent witness has been examined who supported the prosecution version. Thus, in the absence of any detail forthcoming from the prosecution that the private vehicle was hired or utilised for a patrolling purpose, this Court finds that the case of the prosecution does not inspire confidence in its truthfulness. On the other hand, version of the defence appears to be more plausible as even the driver of private vehicle who was one of the best witness to prove the use of vehicle by the police party, has not been examined by the prosecution.

In view of the above, the present revision petition is allowed. Resultantly, the impugned judgment and order dated 2.5.2015 passed by learned Sub Divisional Judicial Magistrate, Sunam and affirmed by learned Additional Sessions Judge, Sangrur vide judgment dated 16.11.2015, are set aside. The petitioner-accused is acquitted of the charge levelled against him. He be released from custody forthwith, if not required in any other case.

May 30, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE