

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.4153 of 2015 (O&M)
Date of decision: 28.01.2016

Ramandeep Singh @ Raman

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Harpreet Multani, Advocate for the petitioner
Mr.Ashish Sanghi, DAG Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?* **yes**
2. *To be referred to the Reporters or not ?* **yes**
3. *Whether the judgment should be reported in the Digest?* **yes**

Kuldip Singh, J.

Challenged in the present revision is the judgment dated 17.9.2015, passed by the learned Additional Sessions Judge, SAS Nagar, Mohali affirming the judgment and order dated 27.1.2015, passed by the learned Chief Judicial Magistrate, SAS Nagar, Mohali, vide which the present revisionist/ petitioner was convicted under Section 25 of the Arms Act, 1959 for keeping in his possession one . 38 bore revolver, which is prohibited bore weapon, along with 4 live cartridges and was sentenced to undergo RI for five years. The period already spent by the convict was ordered to be set off against the substantive sentence. The revolver and the cartridges were ordered to be forfeited to the State and be disposed of.

The facts of the case so far necessary for the disposal of

the present revision are that on 19.12.2007, ASI Charan Singh was present near T-point at Mohali Club, Phase 11, Mohali in connection with investigation of FIR No.206 dated 11.12.2007 under Section 336 read with Section 34 IPC and had recovered .22 bore pistol from the accused-petitioner. Magazine of the same was unloaded and 6 live cartridges were recovered. The same were taken into possession.

During the investigation of the said case pertains to FIR No.206 of 2007, the police obtained the remand of the accused. During interrogation, the accused suffered disclosure statement that he has kept concealed .38 bore Webly Scot, Birmingham, Made in England, revolver No.7611 along with 4 cartridges of .38 bore, 57 cartridges of .22 bore and 2 empties of .22 bore in his house and can get the same recovered. In pursuance to the said statement, the accused got recovered the said revolver and cartridges. The same were taken into possession. On this present FIR No.211 dated 19.12.2007 under Section 25/54/59 of the Arms Act was registered at police Station Phase 8, Mohali.

After receiving the report regarding the revolver and cartridges from the forensic science laboratory, the Challan in this case was presented.

Accused was charge sheeted under Section 25 of the Arms Act, to which he pleaded not guilty.

In support of its case, the prosecution examined ASI Charan Singh (PW1), ASI Rajinder Singh (PW2), HC Ajit Singh (PW3), Gurmeet Singh (PW4), HC Iqbal Singh (PW5), ASI Sartaj Singh (PW6) and HC Sucha Singh (PW7).

When examined under Section 313 Cr.P.C., the accused pleaded innocence.

Accused did not lead any evidence in defence.

After hearing the prosecution and learned defence counsel and going through the evidence, the learned Chief Judicial Magistrate, SAS Nagar, Mohali, vide judgment and order dated 27.1.2015 convicted the present petitioner under Section 25 of the Arms Act and since the recovery was of a prohibited bore weapon, sentenced him to undergo RI for five years under the Arms Act, 1959. Aggrieved of the said judgement, the present petitioner preferred an appeal. The learned Additional Sessions Judge, SAS Nagar, Mohali, vide judgement and order dated 17.9.2015 affirmed the findings recorded by the learned Chief Judicial Magistrate, SAS Nagar, Mohali and dismissed the appeal. This is how the present petitioner has come up in the revision before this Court.

I have heard learned counsel for the parties and have also carefully gone through the file.

First and the foremost argument in this case is that no sketch of .38 bore revolver was prepared and that no sketch is there on file. Therefore, it cannot be said that the revolver produced in this case was the same which is alleged to have been recovered from the accused. I am of the view that the recovery memo clearly shows that .38 bore Webley Scot, Birmingham, Made in England was bearing a specific number i.e. 7611. Therefore, from the said number, the revolver could be easily identified by the laboratory as well as during trial. The revolver was in fact produced during trial and it was not

suggested to the witness that it is not the same revolver which is alleged by the prosecution to have been recovered from the accused. The purpose of preparing a rough sketch of the weapon is to ensure that the weapon is identified from the sketch. However, when the weapon bears a specific identification mark or serial number, in that case, even if rough sketch is not prepared that is not fatal to the prosecution case.

Learned counsel for the petitioner has further argued that in this case, the learned District Magistrate, while granting sanction has not applied his mind. It is stated that the weapon should have been produced along with the police file before the District Magistrate to enable the District Magistrate to make up his mind as to whether the sanction is to be granted or not? It is argued that one single sanction (Ex.PW4/A) was granted by the District Magistrate regarding the present case and the previous case No.206 registered against the petitioner under Section 336 read with Section 34 IPC and 25 of the Arms Act regarding .22 bore pistol and some cartridges.

Section 39 of the Arms Act, 1959 deals with the grant of sanction which is reproduced as under:-

“39. Previous sanction of the district magistrate necessary in certain cases.- No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.”

The Section does not lay down as to what is to be considered while granting the previous sanction. The principles of natural justice require that the District Magistrate should apply his

mind on the facts of the case before granting sanction. The present sanction (Ex.PW4/A) clearly shows that the District Magistrate, SAS Nagar had applied his mind to the facts of the case. It is specifically stated that he has examined challan file and the police file and that according to him, the accused has committed the offence under Section 25 of the Arms Act. Arms Act or the Rules framed thereunder do not require that at the time of grant of sanction, the weapon should also be produced before the District Magistrate for examination. It is personal satisfaction of District Magistrate and it is upto the District Magistrate to see as to what documents or objects are required for his personal satisfaction. Therefore, it cannot be said that as weapon was not produced before the District Magistrate, therefore, sanction (Ex.PW4/A) is not a valid sanction.

The authority in the case of Randhir Singh @ Chini v. State of Haryana, 2012(4) RCR (Criminal) 770, shows that it was a case under Section 307 read with Section 34 IPC and Section 25 of the Arms Act. The Co-ordinate Bench of this Court held that the grant of sanction is not a formality as held in Sukh Lal and another v. State of M.P. 1998 Criminal Law Journal 1366. However, in the present case, the sanction has been discussed and it has been held that it was not a mere formality. Therefore, mere non production of weapon before the District Magistrate is no ground to hold that the District Magistrate did not apply his mind to the facts of the case before granting the sanction. It has also been held by this Court that the law does not mandate that the weapon must be produced before the District Magistrate at the time of grant of sanction. Therefore, this

authority is also of no help to the learned counsel for the petitioner.

Learned counsel for the petitioner has also referred to the authorities in Sukhlal and another v. State of M.P., 1998 CriLJ 1366, Raees Khan v. State of Madhya Pradesh, 2008(69) AIR 455, Baidyanath Mahto v. State of Bihar, 2005(3) Crimes 63, Md. Amsor Ali v. State of Assam, 2006(47) AIR 394, Sahib Singh v. State of Punjab, 1997 AIR (SC) 2417, Sans Pal Singh v. State of Delhi, 1999 AIR (SC) 49, Malkiat Singh v. State of Punjab (CRA-S-1351-SB of 2001) decided on 25.3.2015, Darshan Singh v. State of Punjab, 1989 (1) CurLJ (CCR) 74, Chandra Prakash v. State of U.P., 2002 AIR (SC) 1652, State of Bihar v. Kalika Kuer, Kalika Singh and others, 2003 AIR (SC) 243, Jindal Dye Intermediate Limited v. Collector of Customs, Mumbai, 2006(197) ELT 471, D.R., Maharashtra University of Health Sciences represented by Deputy Registrar v. Paryani Mukesh Jawaharlal and others, 2007(3) SCT 711, Rajasthan Public Service Commission and another v. Harish Kumar Purohit and others, 2003(2) SCT 1022, M.P. Gangarangaiah and others v. State of Karnataka and others, 2002(4) SLR 779, Narendra Mishra and others v. State of Bihar through the Commissioner cum Secretary, Urban Development Department, Government of Bihar and others, 2015(1) PLJR 650, Jabalpur Bus Operators Association v. State of M.P., 2003 (3) RCR (Civil) 342. After considering the said authorities, I am of the view that each authority is to be appreciated in the background of own case.

Learned counsel for the petitioner has further argued that in this case, the armour was not examined and that the report of

Forensic Science Laboratory is not sufficient to show that the cartridge could be fired from the said weapon. Admittedly, in this case, the armour was not examined. However, the report of Forensic Science Laboratory, Punjab, Chandigarh was tendered into evidence under Section 293 of Cr.P.C. (Ex.P15). At that time, the accused did not claim his right that the witness should be called for cross-examination. The report shows that one .38 inch spurious revolver Mark W1 can be fired through hammer.

The contention of learned counsel for the petitioner is that report of FSL shows that the revolver could be fired with hammer. The learned counsel apparently wants to stress that FSL report means that some other hammer is required for firing the cartridge. However, Forensic Science Laboratory has various instruments to measure the force of the hammer of revolver, which is sufficient to analyse with which force it will strike the cartridge so as to come to the conclusion that cartridge can be fired with the said hammer of the weapon. Therefore, the report of FSL shows that it is talking about the hammer of the said revolver. The laboratory after the scientific test came to the conclusion that with the said hammer, the cartridge could be fired. Therefore, the report of Forensic Science Laboratory, Punjab is at a higher footing than the report of the armour and was rightly relied upon by the two courts below to hold that the revolver was in working order.

Learned counsel for the petitioner has further argued that the weapon was not test fired by the laboratory. Therefore, it cannot be said that it is in working order. I am of the view that it is not the law

that only by test firing it can be determined that the weapon is in working order and can fire the cartridge. Even from the scientific methods, the laboratory can conclude that the weapon could fire the cartridge. Therefore, test firing is no pre-condition to hold that the revolver was in working order.

The learned counsel for the petitioner has relied upon the authority *Bhuptej Pal Singh v. State of Punjab*, 2014(1) RCR (Criminal) 24 and has argued that since the bullet was not test fired, therefore, it cannot be said that the revolver is in working order. The perusal of the said authority shows that in the said case, it was country made revolver not bearing any number. In the said case, there was no report from the Forensic Science Laboratory and the revolver and cartridges were not sealed at the spot, whereas in the present case, these were sealed at the spot. In the said case, there were several other grounds and the cumulative effect of the same was considered by the Court to grant benefit of doubt to the accused.

Learned counsel for the petitioner has further argued that in this case no independent witness was examined. I am of the view that in the given circumstances both the Courts below have relied upon the statements of the witnesses. It was supported by the recovery of spurious weapon from the petitioner. It was for the petitioner-accused to explain as to how he came in possession of the said weapon. The weapon was recovered on his identification from his house along with the cartridges.

All the arguments raised by the present petitioner before the two Courts below have been well discussed and met. There is no

ground to interfere in the said findings.

In the present case, the accused when arrested in FIR No.206 dated 11.12.2007 under Sections 336/34 and 25 of the Arms Act, made the disclosure statement and got the recovery effected. The said case was based on the alleged incident in which the present petitioner fired in the air. The copy of the judgement in the said case on file shows that in the said case, witness turned hostile. Therefore, the said incident could not be proved. Here, in this case, from the cogent and convincing evidence of the prosecution witnesses, the recovery of one spurious .38 bore revolver from the petitioner has been proved.

It being so, there is no illegality and infirmity in the findings recorded by the two Courts below.

Consequently, the present revision stands dismissed.

28.01.2016

gk

(Kuldip Singh)
Judge