

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

Crl. Appeal S-1234-SB of 2004
Date of Decision : August 03, 2017

Amardeep @ Pappa

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. N.S.Shekhawat, Advocate
for the appellant.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

The appellant, alongwith five others, namely, Dharambir, Sanjiv @ Babbla, Raj Kumar, Virender @ Billu and Banarasi Dass, was tried for committing the offences punishable under Sections 399 and 402 IPC. The appellant was also tried for committing the offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 29.5.2004, learned Additional Sessions Judge, Panipat acquitted the appellant and his co-accused of the charges under Sections 399 and 402 IPC. However, the appellant was held guilty under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for

two years and six months and to pay fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which stood admitted and his sentence of imprisonment suspended during the pendency of the appeal.

According to the prosecution, on 9.10.2000, ASI Ishwar Singh, alongwith other police officials, was on patrol duty at New Anaj Mandi, Samalkha. He came across Sulwant Singh, former Sarpanch of village Basera, who disclosed that the appellant alongwith Dharambir, Sanjiv @ Babbla, Raj Kumar and Virender @ Billu was present at an uninhabited petrol pump. They were sitting in a car which was not bearing the registration number. They were armed with countrymade pistol, iron rods etc. and planning to commit dacoity at a house and in case a raid was conducted, they could be apprehended alongwith their weapons. At this, ASI Ishwar Singh prepared raiding parties with the direction that they should act as per his orders. ASI Ishwar Singh, Sulwant Singh and other police officials reached the petrol pump in question and saw that five boys were conversing with each other. One of them, who was on the steering wheel of the car, proclaimed that he was carrying a loaded pistol and would loot cash at the petrol pump. He also instructed one of his

companions to remain near the car. ASI Ishwar Singh signalled the raiding parties and apprehended the accused. The search of the appellant led to recovery of a loaded countrymade pistol of .315 bore from his possession. Two others were carrying iron rods whereas two more were having lathis with them. Ruqa was, thereafter, prepared and sent to the Police Station for recording the First Information Report. During the investigation, the appellant and Dharambir disclosed about keeping 10 maruti cars at the house of Banarasi Dass. Accordingly, Banarasi Dass was also arrested in the present case.

As mentioned above, the prosecution failed to prove its case against the appellant and his co-accused for the charges under Sections 399 and 402 IPC. However, the appellant was convicted and sentenced under Section 25 of the Arms Act.

Learned counsel for the appellant has not challenged the impugned judgment of conviction passed by the learned trial Court. However, he has submitted that the appellant is facing the agony of criminal prosecution for the last about seventeen years. The appellant is on bail pursuant to the order passed by this Court on 3.7.2004. He has not misused the concession of bail in any manner. He is the sole bread winner of his family consisting of aged mother, wife and two daughters, who are 11 years' and 8 years' old and student of 6th and 2nd class, respectively. Out of the sentence of 2½ years imposed upon him, he has already

undergone a period of about four months. Though he stood involved in five other cases yet in all of them he either stands discharged or acquitted. In this regard, he has already placed on record copies of the judgment dated 31.7.2003 passed by Additional Sessions Judge, Panipat in FIR No. 606 dated 28.11.1997, Police Station Samalkha under Sections 302, 307, 450 read with Section 34 IPC and Section 25 of the Arms Act; judgment dated 26.2.2004 passed by Additional Sessions Judge, Panipat in FIR No. 581 dated 9.11.1997, Police Station Samalkha under Sections 398/307/148/149 IPC and Section 25 of the Arms Act; and judgment dated 17.9.2003 passed by Additional Sessions Judge, Panipat in appeal in FIR No. 321 dated 15.7.2000, Police Station City, Panipat under Sections 379 and 411 IPC. He has also produced copy of the judgment dated 19.12.2009 passed by Additional Chief Judicial Magistrate, Kurukshetra in FIR No. 180 dated 22.11.2000 under Sections 420, 467, 468, 471, 379 and, 411 IPC; and order dated 31.10.2012 passed by Metropolitan Magistrate, Rohini, Delhi whereupon it stands mentioned that the appellant stood discharged in FIR No. 573 of 2000, Police Station Shalimar Bagh under Sections 379 and 411 IPC. It is also submitted that the appellant is now settled at Panchkula and working as a small time property dealer. Prayer has, accordingly, been made for taking a lenient view in the matter of his sentence of imprisonment.

Learned State counsel has opposed the prayer by submitting that the appellant was found in possession of a loaded countrymade pistol of .315 bore without having any licence or permit to carry the same. Therefore, the sentence of imprisonment awarded to him is commensurate with the crime committed by him. Learned State counsel, however, could not dispute the factum of outcome of the various other cases in which he stood involved earlier.

As per the custody certificate already brought on record by the State counsel, the appellant has undergone an actual sentence of three months and twenty six days out of the sentence of two years and six months imposed upon him.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail for the last more than thirteen years, need not be sent behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 25 of the Arms Act is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs. 5,000/- imposed upon him by the learned trial

Court is, however, enhanced to Rs. 10,000/-. As the appellant has already deposited the fine amount of Rs. 5,000/- imposed by the trial Court vide receipt No. 118825 dated 29.5.2004, he shall deposit the enhanced amount of fine in the Court of learned Chief Judicial Magistrate, Panipat within a period of three months from today, failing which he shall undergo simple imprisonment for six months.

The appeal is, accordingly, disposed of.

August 03, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No