

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

CRA-S-691-SB of 2014 (O&M)

DATE OF DECISION :- February 03, 2017

Gurmukh Singh alias Ganna and others

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. B.S. Saini, Advocate for the appellants.

Mr. Balbir Singh Sewak, Advocate
for appellant-Makhan Singh.

Mr. R.S. Randhawa, Additional Advocate General, Punjab.

CRM No. 174 of 2017

The written arguments are permitted to be placed on record.

The application stands disposed of accordingly.

CRA-S-691-SB of 2014

1. Appellants Gurmukh Singh and Pal Singh were convicted under Section 25(1A) of the Arms Act and were sentenced each to undergo 7 years rigorous imprisonment and to pay a fine of ₹5,000/- and in default to undergo a further period of 6 months rigorous imprisonment. Appellants Gurmukh Singh, Pal Singh and Makhan Singh were convicted under Section 20 of the Unlawful Activities (Prevention) Act, 1967 and were sentenced each to undergo 10 years rigorous imprisonment and to pay a fine of ₹7,000/- and in default to undergo a further period of 9 months rigorous imprisonment. Accused Pal Singh also was convicted under Section 5 of the

Explosive Substances Act and was sentenced to undergo 10 years rigorous imprisonment and to pay a fine of ₹7,000/- and in default to undergo a further period of 9 months rigorous imprisonment.

2. Accused Kulwant Singh, Gurmukh Singh, Pal Singh and Makhan Singh faced the trial. The charges framed against Kulwant Singh abated as he died during the pendency of trial. Accused Gurmukh Singh, Pal Singh and Makhan Singh who were convicted and sentenced, as stated above, have challenged the conviction and sentence passed by the trial Court.

3. It is the case of the prosecution that on 25.7.2010, PW19 Inspector Harvinder Pal Singh attached to State Special Operation Cell, Amritsar, received a secret information that one Narain Singh @ Chaura and one Darshan Singh Dhadi were associated with terrorist organization based in Pakistan and several other countries. They were trying to spread terrorism in Punjab. Another associate of those persons, namely, Pal Singh, a resident of France, in order to spread terrorism in France and other countries and also in order to provoke anti nationalist feelings amongst public indulged in accumulating huge funds. The informer also conveyed to PW19 that Pal Singh, in order to advance the mission of the terrorist organization had already started recruiting young boys in their organization. At the instance of Narain Singh and Pal Singh, a huge consignment of arms and ammunition has been smuggled from Pakistan and the same has been received by Jagtar Singh @ Gurdip Singh, a resident of village Thoba by crossing the border from the Ramdas Sector. Narain Singh, Pal Singh, Kulwant Singh and Gurmukh Singh had received a part of the consignment

of arms and ammunition and explosives from Jagtar Singh Thoba and had set out to transport that consignment from Thoba on a Bolero Jeep PB08-BL-4054 to deliver the same to Pal Singh at village Dhadowal. The informer also informed PW19 that if a police picket was installed at the Millenium Gate, Jalandhar Bye Pass, Amritsar, the consignment of arms and ammunition along with explosives could be seized from those persons. Considering the above information to be reliable and trustworthy, PW19 took into confidence Sh. Mandeep Singh, PPS S.P. Amritsar, who directed PW19 to proceed with police party to Jalandhar Bye Pass, Amritsar and installed a police picket. The police party was waiting at that place. On seeing the police party, the driver of the above Bolero Jeep was in the process of reversing the Jeep so as to escape from the picket. PW19, with the help of the police party however managed to apprehend his Jeep. The driver disclosed his name as Kulwant Singh. The other person who was seated next to the driver disclosed his name as Gurmukh Singh. The Bolero Jeep was subjected to a thorough search. From the dickey of the vehicle, a white coloured gunny bag was recovered. It contained two AK 47 assault rifles and five AK 47 magazines. Another plastic wrapper which contained AK 47 cartridges numbering 420 was recovered. The arms and ammunition were taken into police custody. Kulwant Singh and Gurmukh Singh were subjected to a personal search. They were unable to produce any licence for the arms and ammunition. A ruqa was prepared and dispatched to the police station. F.I.R. under the Arms Act, Explosive Substances Act and Unlawful Activities (Prevention) Act was registered. The accused were arrested and produced before the learned Judicial Magistrate. Accused Kulwant Singh

and Gurmukh Singh were remanded to police custody. PW19 received an information that Pal Singh was making plans to flee towards Delhi. He was arrested while he was standing to board a bus. On 28.7.2010 accused Pal Singh was produced before the Magistrate, who remanded him to police custody. Thereafter Accused Kulwant Singh @ Raju was arrested. On the basis of the disclosure statement made by Kulwant Singh, a plastic box kept hidden in a house was recovered. It contained Motorola Mobile Phone, a Vodafone Sim Card and a recharge card issued by some Pakistani company. All these articles were recovered from his house. Accused Pal Singh suffered disclosure statement. On the basis thereof, arms and ammunition and R.D.X. kept in a gunny bag in a pit near the boundary wall of his house were recovered. One magazine sub machine gun K.L.C.L, 150 cartridges of sub machine gun, one magazine of AK 47 with 100 live cartridges, five packets of R.D.X. each weighing three kilograms, two detonators, one battery and three bundles of fuse wires were recovered. Upon conclusion of the investigation, charge sheet was laid against the accused.

4. Learned counsel appearing for the appellants submitted that the framing of charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967 against appellants Gurmukh Singh, Pal Singh and Makhan Singh suffers from fundamental flaw. The terrorist organization notified in the first schedule was not at all referred to in the charge sheet. The nature of terrorist act committed by the accused had not been described. It is only an Officer in the rank of Deputy Superintendent of Police or a Police Officer above that rank, who is competent to investigate the charge under the above Act. Further, the sanction accorded by the State Government as required under

the above Act is defective. Therefore, the accused appellants are entitled to acquittal of the charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967.

5. I also heard the submission made by the learned Additional Advocate General appearing for the State of Punjab supporting the charge formulated against the accused appellants.

6. Any person who is member of a terrorist gang or a terrorist organization which is involved in terrorist act shall be punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967.

7. The charge framed against the accused on 23.11.2013 reads that on or before 6.5.2011, in the area of different parts of Punjab etc. all the above named accused were members of terrorist organization involved in terrorist act and thereby they have committed an offence punishable under Section 20 of the said Act.

8. Three ingredients will have to be established by the prosecution to bring home the above charge to the accused. Firstly, the prosecution should establish that there was a terrorist organization as notified in the first schedule of the Act. Secondly, it shall be established that the accused were members of the said terrorist organization. Thirdly, it should be proved that the terrorist organization was involved in terrorist act.

9. Every organization in which an accused is associated cannot be termed as terrorist organization. In terms of Section 35 of the said Act, the Legislature has included 38 organizations as terrorist organizations. In my considered view, the charge should read that accused were members of one of the terrorist organizations found in the first schedule. The first

fundamental flaw in the charge framed against the accused is that the terrorist organization, as referred in the first schedule, was not at all introduced in the charge sheet. Secondly, what sort of terrorist act as defined under Section 2(K) of the said Act was committed by the terrorist organization, was not at all described in nutshell in the charge sheet. The accused were completely kept in dark as regards the terrorist organization found incorporated in the Schedule. The nature of terrorist acts perpetrated by the terrorist organization was also not put to the accused through the relevant charge. Therefore, in my considered view, as submitted by the counsel appearing for the appellants, the charge framed under Section 20 of the Act is vitiated.

10. It is an admitted position that the offence under Section 20 of the said Act falls under Chapter IV of the Act. In terms of Section 43 of the said Act, no Police Officer below the rank of Deputy Superintendent of Police or a Police Officer of an equivalent rank shall investigate the offence under Chapter IV of the Act.

11. PW19 Inspector Harvinder Singh, who is only an Inspector in rank having received the secret information, proceeded to the place of recovery, accosted the accused and recovered the material objects. PW20 SP Gurbax Singh, DSP has associated himself with PW19 in the process of investigation. In fact the material part of investigation was conducted by PW19 who was an Inspector by rank against the mandatory provision as contemplated under Section 43 of the said Act. Under such circumstances, the investigation embarked upon by PW19 in connection with the offence under Section 20 committed by the accused is found to be an incurable

defect in the investigation process embarked upon by the Agency.

12. No Court shall take any cognizance under Chapter IV without the previous sanction of the Central Government or the State Government, as the case may be. But the sanction for prosecution shall be given by the Central Government or the State Government, as the case may be, only after considering the report of such Authority pointed out by the Central Government or the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation to the Central Government or the State Government concerned as per Section 45 of the above Act. But in the instant case, no such Authority was appointed by the State Government to make an independent review of the evidence gathered by the investigating Agency. No report submitted by such an Authority to enable the State Government to accord sanction was produced. Therefore, the sanction accorded by the State Government for prosecution of the offence under Chapter IV is against the spirit of the mandatory provisions under Section 45 of the above Act.

13. In view of the above breaches of the mandatory provisions under the above Act, the Court cannot lawfully convict the accused who face the above grave charge. Therefore, it is held that accused appellants are entitled to acquittal of the charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967.

14. Appellants Gurmukh Singh and Pal Singh were also charged under Section 25 of the Arms Act. PW19 has spoken in detail as to the secret information he received. The police party intercepted the Bolero vehicle and the arms and ammunition were recovered from accused

Gurmukh Singh and Pal Singh. PW20 SP Gurbax Singh, DSP, who investigated the case later, PW 21 Inspector Gurinder Pal Singh and PW22 Rajpal Singh, DSP have completely corroborated the evidence of PW19. PW11 ASI Sukhdev Singh who was working as Head Armour in CID Wing, Amritsar, had received the arms and ammunition along with sample seals and compared them and mechanically analysed them and gave an opinion that they were in working condition. PW8 Chaman Lal speaks about the sanction accorded for prosecution under Section 25 of the Arms Act.

15. Learned counsel appearing for the appellants vehemently submitted that the charge was framed under Section 25 of the Arms Act but conviction was unfortunately recorded under Section 25 (1A) of the said Act. Therefore, the conviction recorded under a different provision of penal law is vitiated. Investigation preceded registration of the F.I.R. It is further submitted that PW19 who was not a Station House Officer has no authority to take up the investigation.

16. The ingredients of Section 25 (1A) have been incorporated in the charge under Section 25 of the Arms Act. Further, Section 25 (1A) is not found to be all together different provision of penal law. 1A has been incorporated only under the ambit of Section 25 in Chapter V of the Arms Act, 1959. In my considered view, no prejudice also has been caused to the accused, more especially when the ingredients of Section 25(1A) of the Arms Act had been adequately brought to the notice of the accused.

17. PW19 was not serving, particularly, in any police station. He was attached to State Special Operation Cell, Amritsar. He had got a green signal from Sh. Mandip Singh PPS AIG State Special Operation Cell,

Amritsar before ever he proceeded to the place of recovery. Therefore, it cannot be said that PW19 had investigated the case under the Arms Act without any authority. In my considered view, the trial Court has rightly convicted appellants Gurmukh Singh and Pal Singh from whom the prohibited weapons were recovered under Section 25 (1A) of the Arms Act.

18. PW10 ASI Raman Kumar has spoken about the deposit of R.D.X. recovered from Pal Singh in police Malkhana. The evidence of PW19, PW20, PW21 and PW22 goes to establish that the explosive substances were recovered based on the disclosure statement suffered by accused Pal Singh. PW9 Constable Lakhbir Singh had deposited five parcels of R.D.X. along with sample seal to the FSL, Chandigarh. PW 5 has spoken about the sanction PW5/A accorded for prosecution of Pal Singh under Section 5 of the Explosive Substances Act, 1884. In my considered view, the trial Court has rightly evaluated the evidence and come to a conclusion that the charge under Section 5 of the Explosive Substances Act, 1884 was established beyond reasonable doubt against accused Pal Singh.

19. Therefore, accused/ appellants Gurmukh Singh, Makhan Singh and Pal Singh who are the appellants herein are acquitted of the charge under Section 20 of the unlawful Activities (Prevention) Act, 1967 as the prosecution miserably failed to bring home the said charge to these appellants. The judgment of conviction passed by the trial Court against accused/appellants Gurmukh Singh and Pal Singh for the charge under Section 25 (1)(A) of the Arms Act stands confirmed. The conviction recorded by the trial Court against accused/appellant Pal Singh under Section 5 of the Explosive Substances Act, 1908 is also confirmed.

20. The custody certificate reflects that accused/appellants Gurmukh Singh and Pal Singh have already undergone actual sentence of 6 years and 6 months. They have, in fact, undergone almost 7 years including remission. Therefore, the substantial sentence imposed by the trial Court on appellants Gurmukh Singh and Pal Singh for the offence under Section 25(1)(A) of the Arms Act and on appellant Pal Singh under Section 5 of the Explosive Substances Act is reduced to the period already undergone by them. The fine amount and default sentence imposed by the trial Court upon accused/ appellant Pal Singh for the offence under Section 5 of the Explosive Substances Act is set aside. But the fine amount and default sentence imposed by the trial Court against appellants Gurmukh Singh and Pal Singh under Section 25(1)(A) of the Arms Act stands confirmed.

21. The accused/appellants be released forthwith, if their custody is not required in connection with any other case. Consequently, appeal qua Makhan Singh is allowed and appeal qua appellants Gurmukh Singh and Pal Singh stands dismissed with the above modification in the matter of conviction and sentence, as indicated above.

(M. JEYAPPAUL)
JUDGE

February 03, 2017

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No