

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-30499 of 2014 (O&M)
Date of Decision: 16.01.2017

Manpreet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Manish Soni, Advocate,
for the petitioner.

Mr. Ankur Jain, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Petitioner assails the validity and legality of the prosecution instituted against him for offence under Section 25 of the Arms Act.

At the stage of issuing notice of motion in the instant petition filed under Section 482 Cr.P.C. the contention raised by counsel for the petitioner had been noticed that no sanction had been obtained under Section 39 of the Arms Act of prosecuting the petitioner towards alleged possession of the cartridges/ammunition and as such the order framing charge under Section 25 of the Arms Act was illegal. This Court had stayed further proceedings before the trial Court on 17.11.2014 itself.

Brief facts that would require notice are that consequent to registration of FIR No.14 dated 06.02.2013 under Sections 25/54/59 of the Arms Act 1959 and under Section 188 IPC registered at Police Station City Fazilka, District Fazilka, investigation was carried out and the challan/final investigation report under Section 173 (2) Cr.P.C. was filed on 19.06.2013 (Annexure P-9). Perusal of the same would bring forth the accusation

against the present petitioner. Case of the prosecution is that on 06.02.2013 a police patrolling party headed by SI Surinder Singh, S.H.O., Police Station City Fazilka upon receiving secret information apprehended Manpreet Singh Azad (present petitioner) and he was found in possession of certain arms and ammunition. Ultimate offence found to have been allegedly committed by the petitioner is of being in possession of 5 live cartridges of .315 bore without licence. The trial Court vide order dated 12.05.2014 at Annexure P-8 has charge-sheeted the petitioner for having committed offence punishable under Section 188 IPC and Section 25 of the Arms Act.

In response to the petition, a reply by way of an affidavit of Deputy Superintendent of Police, Sub Division Fazilka has been filed and placed on record. Stand taken on behalf of the State is that the petitioner was in illegal possession of 5 cartridges of .315 bore and as such he has committed the offence under the Arms Act. State counsel has adverted to the documents appended along with the reply at Annexure R-1/T to contend that sanction of the District Magistrate, Fazilka to prosecute the petitioner for offence under the provisions of the Arms Act has been obtained vide order dated 30.10.2014.

Counsel for the parties have been heard at length.

Section 39 of the Arms Act, 1959 reads 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 uncontroverted facts from the pleadings on record are that after registration of the FIR in question challan was presented by the

investigating agency under Section 173(2) Cr.P.C. on 19.06.2013. The

charge against the petitioner for offence under the Arms Act has been framed by the trial Court vide order dated 12.05.2014.

State Government in his reply has conceded that sanction to prosecute the petitioner for being in alleged possession of 5 live cartridges of .315 bore and thereby committing offence under the provisions of Arms Act was obtained only vide order dated 30.10.2014 passed by the District Magistrate, Fazilka.

The mandate under Section 39 of the Arms Act, 1959 is couched in clear and unambiguous terms. Prosecution against any person cannot be instituted in respect of any offence under Section 3 of the Act without previous sanction of the District Magistrate. Admittedly, in the present case, the challan and framing of charge against the petitioner has taken place prior to the sanction having been accorded by the District Magistrate i.e. on 30.10.2014. For the sake of reiteration, it may be noticed that challan was presented on 19.06.2013 and the charges have been framed on 12.05.2014.

In the considered view of this Court, the sanction obtained by the prosecution against the petitioner at a subsequent stage will not cure the defect and as such the entire proceedings stand vitiated. A similar view was also taken by the ***Delhi High Court in Smt. Javitri Devi Vs. State, (Delhi) CriLJ 1340.***

For the reasons recorded above, the present petition is accepted and the order of the trial Court framing charge against the petitioner under the Arms Act is quashed. This order, however, shall not preclude the prosecution from filing a fresh complaint against the petitioner after obtaining proper sanction as per mandate and requirement under Section 39

of the Arms Act if there be no legal impediment for filing of such complaint.

Petition is allowed in the aforesaid terms.

16.01.2017

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Whether Reportable

Yes

Yes