

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2160 of 2015 (O/M)
Date of decision : 21.9.2017

Rakesh alias Raka

..... Revisionist

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Surinder Gandhi, Advocate, for revisionist.

Mr. Pawan Garg, AAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Impugned in the present revision is the judgment dated 15.5.2015, passed by the learned Additional Sessions Judge, Karnal, affirming the judgment of conviction dated 16.9.2014 and order of sentence dated 19.9.2014, passed by the learned Judicial Magistrate 1st Class, Karnal, whereby revisionist was convicted under Section 25 of the Arms Act, 1959, and was sentenced to undergo rigorous imprisonment for one year and fine of Rs. 500/-. The fine was paid.

The facts of the case are that on 17.6.2012, H.C. Rajnish alongwith other police officials was present at Sector-6 Chowk, GT Road, Karnal, when he received a secret information that Rohit alias Joni is engaged in the business of buying and selling illegal country made pistol and that today Rakesh alias Raka (present revisionist) after purchasing the pistol from Rohit is going from the side of Manglora towards Sector-6, Karnal. Accordingly, the police erected the barricades and when the accused

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Rakesh alias Raka reached there, he was apprehended and a country made .
32 bore country made pistol was recovered from his possession.

In support of its case, prosecution examined as many as 9 witnesses. When examined under Section 313 Cr.P.C., accused pleaded false implication. In defence, accused tendered some documents and the remaining defence evidence was closed by orders. The trial of present revisionist resulted in his conviction under Section 25 of the Arms Act, 1959, whereas Rohit alias Joni was acquitted of the charges framed against him, granting him the benefit of doubt. The judgment was affirmed in appeal by the learned Additional Sessions Judge, Karnal, on 15.5.2015.

I have heard the learned counsel for revisionist, the learned State counsel and have also carefully gone through the file as well as lower Court file.

The learned counsel for revisionist has vehemently argued that the place of recovery was a thorough place. Therefore, it was imperative upon the police party to join the independent witness. It is contended that the police did not make any effort to join the independent witness. Therefore, revisionist is liable to be acquitted of the charges framed against him. Reliance has been placed upon the authority of Apex Court in Sahib Singh Versus State of Punjab, 1997 AIR (SC) 2417.

The perusal of said authority shows that the said case was registered under the Terrorist and Disruptive Activities (Prevention) Act, 1987, and there, no effort was made to join the independent witness. However, the perusal of statements of witnesses in present case shows that in the cross examination, it has come out that it was a thorough passage. People were passing through the same. EASI Amar Singh (PW4) has

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specifically stated that people gathered at the spot. They tried to join the independent witness, but everybody expressed his own compulsions. Similarly, HC Rajnish Kumar (PW6) has also stated in cross examination that 15/20 people gathered at the spot. They had requested the public to become witness, but everybody expressed his own compulsions. It goes to show that the police party had made all efforts to join the independent witness, but for one or the other reason, the passersby avoided to become a witness in the present recovery. Therefore, the said authority is not applicable to the facts of present case.

The learned counsel for revisionist has further argued that it was a secret information and that independent witness should have been joined.

The perusal of the case shows that infact on receiving secret information, the naka/barricades was erected and immediately thereafter, accused was seen coming. It has already been observed above that even after the recovery, nobody joined the investigation as independent witness. Therefore, non-joining of independent witness after receipt of secret information is also of no consequence.

The learned counsel for revisionist has also relied upon the authority of this Court in Kuldip Singh Versus State of Haryana, 2000 (4) RCR (Criminal) 103.

I am of the view that it depends upon the facts of each case. The said case is also distinguishable on account of the fact that in present case, the efforts were made by police party to join the independent witness, but no independent witness joined the police party.

The learned counsel for revisionist has further argued that in this case, the pistol was not produced before the District Magistrate.

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Therefore, the sanction granted by the District Magistrate is illegal. Reliance has also been placed upon the authority of this Court in Randhir Singh @ Chini Versus State of Haryana, 2012 (4) RCR (Criminal) 770, wherein the case law on the point was dealt in detail by this Court in Ramandeep Singh @ Raman Versus State of Punjab, 2016 (5) RCR (Criminal) 527, in which the said authority of the Single Bench was also considered. It was observed as under :-

“15. 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.”

Therefore, non production of weapon before the District Magistrate will not render the sanction to prosecute as illegal.

The learned counsel for revisionist has also referred to some discrepancies in the statements of witnesses, in which one witness states that family of the accused was informed, whereas other witness states that the family of accused was not informed and third witness states that he does not remember whether the family of accused was informed or not.

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I am of the view that prosecution case is required to be corroborated on the material particulars. The non informing or informing of family of accused after his arrest does not affect merits of the case.

Faced with this situation, the learned counsel for revisionist has prayed for leniency in the sentence, stating that there are special and adequate reasons for awarding less than one year of minimum sentence. It is argued that as per the custody certificate, revisionist has already undergone total sentence of 7 months and 27 days including remission of 2 months and 3 days as on 14.9.2017. Revisionist is facing trial since 2012.

I am of the view that mere fact that revisionist has undergone the total sentence of 7 months 27 days including remission of 2 months and 3 days, is no ground to reduce the sentence. From the perusal of file, no special or adequate reasons are made out to reduce the minimum awarded sentence of one year, which is provided for the offence. Therefore, I do not find any merit in revision and same is accordingly dismissed. Present revisionist, who is on bail, be re-arrested and committed to jail to undergo remaining part of sentence.

(KULDIP SINGH)
JUDGE

21.9.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No