

41

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 415 of 2010

- State of Chhattisgarh through P. S. Mainpur, District Raipur (C.G.)

---- Petitioner

Versus

1. Gajla @ Satyam Reddy @ Gopanna Markam, aged about 45 years, S/o Gop Reddy, Vilalge Subba Reddy, P.S. Miriyal Goda, District Balgoda (Andhra Pradesh)
2. Suresh @ Raju, aged about 20 years, S/o Sanku Gond, R/o Aaldand, District Kanker (C.G.)
3. Udal Singh Ram Govind @ Raju @ Surender, aged about 26 years, S/o Manglusingh Gond, R/o Katru Usnedi, P.S. Koylibeda, Presently residing at Village Urpanj, PS Badgaon, District Kanker (C.G.)

---- Respondents

For Petitioner-State
For Respondents

Shri R. K. Mishra, Dy. AG
None

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

29/01/2018

1. This acquittal appeal is preferred against the judgment dated 23.09.2009 passed by the 7th Additional Sessions Judge, Raipur in Sessions Trial No.73/2008, whereby the respondents were acquitted of the charges under Section 25 & 27 of the Indian Arms Act, 1959, Section 3 & 5 of the Explosive Substance Act, 1908 and Section 2(d), (4), (5), (6) read with Section 8 (1) of the

2. As per the prosecution case, the respondents are the members of

the Communist Maowadi Organization popularly known as 'Naxal active in Gariyaband District of the State'. On 04.05.2007, the Police Officer received information that the members of the said organization have gathered at Village Amagaon with firearms, gelatin and other explosive substances and they are having prohibited literature of the said banned organization. Upon information, the Police Officer rushed to the spot and seized firearms, explosive substances, literature of the said organization and other materials from the respondents. The case was registered at Police Station Mainpur and thereafter the investigation was conducted. After completion of the investigation, the charge sheet was filed. The respondents did not plead guilty and the trial was conducted. After completion of the trial, the trial Court acquitted the respondents from the charges as mentioned above.

3. Learned State counsel would submit that the seizure of arms and explosive substances is proved against the respondents, but the trial Court overlooked the evidence adduced by the prosecution. Sanction for prosecution was obtained from the Authority and evidence in this regard is also adduced before the trial Court, but the trial Court disbelieved the same and passed judgment of acquittal contrary to law. Minor contradictions and omissions were not material for deciding the issue, but the trial Court gave undue weightage to the same and came to a wrong conclusion.

4. The prosecution has examined as many as 17 witnesses. No witness has been examined from the opposite side. Head Constable Selmon Ekka (PW-1), Constable Arun Dewangan (PW-2), Constable Gaurishankar Singh (PW-5), Police Inspector V. D. Nand (PW-15), Sub Inspector V. S. Maravi (PW-16) and City Superintendent of Police Prashant Katlam (PW-17) are the members of raid party. They deposed that upon information of gathering of members of the banned organization, they reached to Village Amagaon and in forest of that village, they surrounded the persons gathered there. As per their version, they seized one country made pistol, magazine and 6 cartridges from the respondent Gajla @ Satyam Reddy @ Gopanna Markam. Again they seized gelatin and other articles from the respondent Suresh @ Raju. They again seized detonator, naxal literature and other materials from the possession of the respondent Udai Singh Ram Govind @ Raju @ Surrender. The case of the prosecution is based on seizure of these materials only.
5. The prosecution was under obligation to prove that these articles were firearms and explosive substances, but it is not established from the evidence adduced by the prosecution side that the seized articles were sealed on the spot in presence of the witnesses and after sealing the articles, signatures of Police Officer and witnesses were marked in the packet. Again, there is no evidence to show that these articles were kept in safe custody of Malkhana, Police Station Mainpur. The In-charge of Malkhana is not examined and no register was produced before the trial Court to show that after seizure of the articles, the articles were

C14

kept in safe custody of the Police Station and the same were sent for examination in chemical laboratory by the ballistic expert. In absence of evidence of Malkhana In-charge, it was not safe for the trial Court to jump into conclusion that the seized articles were kept in safe custody of Malkhana and the same were sent for examination.

6. Again in the present case, S. R. Dewangan, Assistant Grade-II (PW-4), who was working in the prosecution branch of the District Magistrate, deposed that the sanction was granted by the Additional District Magistrate. Now, the point is whether the sanction granted by the Additional District Magistrate is in the fitness of legal barrier embodied in Section 39 of the Indian Arms Act, 1959. As per Section 39, ~~no~~ Court can take cognizance on the sanction granted by the District Magistrate. As per Section 21 (1) of the Code of Criminal Procedure, only one Executive Magistrate can be authorized and posted as District Magistrate. No other District Magistrate can be appointed as District Magistrate. In the present case, sanction was not granted by the District Magistrate and, therefore, the trial Court was not competent to take cognizance on the basis of sanction granted by the other Magistrate, therefore, the cognizance itself is not as per letter and spirit of the Act. The prosecution under Section 25 & 27 of the Arms Act, 1959 is not in the fitness of legal aspect of the matter.

7. There is no evidence that the respondents have joined any Communist or Maowadi Organization known as Naxal. No

U5

evidence is available in the record of the trial Court to substantiate these charges. It is also not established that any of the respondent has used any criminal force or committed any violence to intimidate public at large. All the charges levelled were not substantiated and, therefore, the finding of the trial Court is based on the evidence and record.

8. We are of the view that the finding arrived at by the trial Court is not liable to be interfered with.
9. The appeal fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Ram Prasanna Sharma
Judge

Nirala