

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 27th November, 2018

+ CRL.REV. P. 698/2017

DIVYA SHARMA

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ashwin Vaish with Mr. Vinod Pandey, Advocates.

For the Respondent: Mr. Panna Lal Sharma, APP for the State.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns judgment dated 06.05.2017, passed by the Appellate Court, whereby, the appeal of the petitioner, impugning judgment of conviction dated 12/16.11.2013 has been dismissed. By the impugned judgment dated 12.11.2013, petitioner has been convicted of an offence under Section 25 of the Arms Act.

2. The allegations against the petitioner are that the petitioner had accompanied her mother to Tihar Jail to visit an inmate. At the time of scanning, 17 live cartridges were recovered from the bag of the petitioner. Out of the 17 cartridges, 6 were used and 11 were live cartridges. 9 were of .32 bore and 8 were of 7.65 bore. A case under

the Arms Act was registered.

3. Learned counsel for the petitioner had filed an appeal *inter alia* contending that the impugned judgment dated 12.11.2013 was not a judgment in the eyes of law as the same was neither typed nor signed on the date when the judgment was pronounced, i.e, 12.11.2013. It is contended that the record reveals that the judgment though pronounced on 12.11.2013, was typed and signed on 16.11.2013.

4. The Appellate Court, while upholding the conviction of the petitioner, instead of sentencing the petitioner to any punishment, has directed release of the petitioner on probation bond of Rs.25,000/- with one surety of the like amount for maintaining good conduct for a period of one year.

5. Learned counsel for the petitioner has relied on the judgment of this Court in *Jasbir Chahal vs. State*: 2018(5) AD (Delhi) 367 to contend that mere physical possession does not necessarily establish *mens rea* of conscious possession and in absence of *mens rea*, petitioner could not have been convicted of an offence under the Arms Act.

6. With regard to the contention of learned counsel for the petitioner about the pronouncement of the impugned judgment, it may be seen that though, the judgment is dated 12.11.2013 and is alleged to have been pronounced in open Court on 12.11.2013, the date below the signature of the Court is 16.11.2013.

7. In the proceeding sheet of 12.11.2013, the Trial Court has passed the following order:-

*“FIR No. 458/06
PS Hari Nagar Delhi*

12.11.2013

*Present: Ld. APP for the State
Accused Divya Sharma is present with ld.
Counsel Sh. Ashwin Vaish.*

Vide separate judgment announced in open court but not yet typed, accused Divya Sharma is convicted for committing offence under section 25 Arms Act.

Let a probation report be called from concerned probation officer for next date of hearing.

Put up for arguments on sentence and consideration on probation report on 21.11.2013.

At this stage an application under section 353 CrPC for supply of copy of judgment is moved on behalf of convict.

As judgment is not typed as yet as order is announced at 04:00 PM and one regular stenographer is on leave today and the other regular stenographer is busy in doing other miscellaneous work. Therefore, this application shall be taken up on 15.11.2013 at 03:00 PM.

*DHIRENDRA RANA
MM-02/WEST DELHI
12.11.2013”*

8. Section 353 of the Code of Criminal Procedure reads as under:-

“353. Judgment

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub- section (1), the presiding officer shall cause it to be taken down in short- hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub- section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub- section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted: Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

9. Section 353 Cr.P.C. contemplates three situations. On conclusion of the trial, the Trial Court shall pronounce the judgment in open Court immediately after termination of trial or at some subsequent time, of which notice shall be given to the parties. The Trial Court shall (i) either deliver the whole judgment, (ii) read out the whole judgment, if earlier typed or (iii) read out the operative part of

the judgment and explain the substance of the judgment in a language which is understood by the accused or his pleader.

10. Where the judgment is delivered in open Court, the Presiding Officer shall cause it to be taken out in shorthand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court. Where the judgment or the operative part is read out, then it is to be dated and signed by the Presiding Officer in open Court. Where only an operative part of the judgment is ready and the content is explained, the whole judgment or a copy thereof is to be immediately made available for perusal of the parties.

11. In the present case, the judgment is dated 12.11.2013. The judgment was not immediately pronounced after the arguments were heard and judgment was reserved on 25.10.2013.

12. Thereafter, the entire judgment was not pronounced in open Court but only the operative part was pronounced on 12.11.2013. On 12.11.2013, admittedly, the judgment was not even typed. Clearly, since the judgment was not typed, the Trial Court did not and could not have read out the whole judgment or the operative part of the judgment and explained the substance of the judgment to the accused.

13. Clearly, the judgment does not satisfy the requirements of Section 353 Cr.P.C. The Trial Court in the proceeding sheet dated 12.11.2013 has record that the judgment is not yet typed. It is also not

the case that the entire judgment was pronounced in open Court. Last paragraph of the proceeding sheet, recorded on 12.11.2013, records that the judgment is not typed as one regular steno was on leave and the other regular steno was busy in doing other miscellaneous work. The judgment was also not taken down by Court by hand. Since, the order dated 12.11.2013, merely declares the result of the trial without any judgment being available on record. It does not amount to a judgment in terms of Section 353 Cr.P.C. Reference may be had to the judgment of the Supreme Court in *Ajay Singh vs. State of Chhattisgarh: (2017) 3 SCC 330*.

14. Since, there is no judgment satisfying the requirements of Section 353 Cr.P.C., the impugned judgment is liable to be set aside.

15. Further, it may further be seen that neither the Trial Court nor the Appellate court has considered the issue of *mens rea*. There is no discussion at all by the Trial Court or the Appellate Court with regard to conscious possession of the cartridges.

16. Possession under Section 25 of the Arms Act refers to not only physical possession but also requisite mental element i.e. *mens rea* or conscious possession. Mere custody without *mens rea* would not constitute an offence under the Arms Act. Conscious possession of any firearm/ammunition is a necessary ingredient of the statutory offence entailing strict liability on the offender. Reference may be made to the decision of this Court in *Jasbir Chahal vs. State: 2018 (5)*

AD (Delhi) 367. Reference may also be made to the decisions of Coordinate Benches of this court in *Gaganjot Singh vs. State (Govt. of NCT of Delhi)*, 2014 SCC Online Del 6885; *Jaswinder Singh Vs. State (Govt. of NCT of Delhi)*, 2015 SCC Online Del 10894 ; *Sonam Chaudhary vs. State*, 2016 SCC Online Del 47; *Mandeep Lamba vs. State (Govt. of NCT of Delhi)*, 2017 SCC Online Del 9885 and of the Supreme Court in *Gunwantlal vs. State of Madhya Pradesh*, (1972) 2 SCC 194 and *Abdul Nasir Barich versus State (NCT of Delhi)*, 2017(1) JCC 168. In absence of conscious possession of the live cartridges, which cannot be used for any purpose, Section 45(d) of Arms Act would be applicable.

17. The petitioner in a statement before the Trial Court had further contended that the cartridges were recovered from the bag of the mother, who accompanied her to the Jail and not from her bag and she was carrying a two months old baby in her arms. It has further come in evidence that a revolver of 0.32 bore belonged to her uncle having inherited the same from his father.

18. Perusal of the record shows that subject case is clearly covered by the decisions referred to above. Applying the aforesaid principle of law, it can be seen that there is insufficient evidence or reasonable ground of suspicion to satisfy the requirement of conscious possession of the live cartridges recovered from the bag of the petitioner. From the record it can be inferred that the possession of the live cartridges did not fall within the ambit of conscious possession; which is a basic

ingredient to establish guilt for the offence under Section 25 of the Arms Act.

19. In view of the above, the petition is allowed. The impugned judgment dated 06.05.2017 of the Appellate court is set aside and the order of conviction dated 12.11.2013 is quashed both on the account of non-compliance with the provisions of section 353 Cr.P.C. as also on merits.

20. Normally, with the above result, the order by the Revisional Court would be to set aside the order of conviction and remit the matter to the Trial Court for rehearing the final arguments and passing a fresh judgment, however, in the facts of the present case, much water has flown under the bridge.

21. The petitioner was sentenced to undergo simple imprisonment for the period of one year and to pay a fine of Rs.5,000/- and in default to further undergo simple imprisonment for a period of one month. The petitioner had impugned the said conviction of sentence by way of an appeal. By the impugned judgment dated 06.05.2017, the appeal was dismissed insofar as it pertained to the order on conviction but with regard to the sentence, the same was set aside and petitioner was directed to be released on furnishing a probation bond of Rs.25,000/- with one surety of the like amount for maintaining good conduct for the period of one year.

22. Petitioner had furnished the probation bond and as on date even the period of one year of the probation is over. Since the petitioner has already undergone the sentence awarded, as modified by the Appellate Court, it would not be in the interest of justice to remit the matter to the Trial Court for rendering a fresh judgment.

23. The Petition is disposed of in the above terms. No orders as to costs.

24. Order *Dasti* under the signatures of the Court Master.

NOVEMBER 27, 2018
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SANJEEV SACHDEVA, J