

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 234 of 2014**

Sanjay @ Sanju Yadav, S/o Late Ramsakela Yadav, aged 35 years, R/o Chantideeh, Near Gayatri Mandir, Police Station – Sarkanda, Bilaspur, Civil and Revenue District – Bilaspur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through Station House Officer, Police Station – Masturi, District – Bilaspur (C.G.)

----Non-applicant

For Applicant	:	Mr. Malay Shrivastava, Advocate
For Non-applicant	:	Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****19.07.2021**

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) Present revision is directed against the impugned judgment dated 22.3.2014 passed by the Second Additional Judge, Bilaspur of the Court of First Additional Sessions Judge, Bilaspur in Criminal Appeal No. 48/2014 affirming the order dated 26.2.2014 passed by Judicial Magistrate, First Class, Bilaspur in Criminal Case No. 207/13 convicting the applicant/accused for the offence punishable under Section 25 (1B)(a) of the Arms Act, 1959 (henceforth 'Act, 1959') and sentencing him to undergo rigorous imprisonment of two years with

fine of Rs. 1,000/-, with default stipulation.

(3) Brief facts of the case are that on 18.03.2013, on being information received from informant, the police of Police Station Masturi caught hold the applicant near Jairam Nagar Railway track and seized 9 country made pistol (*katta*), 21 live cartridge and one air pistol from his exclusive possession, for which, he was not having valid and effective licence. After usual investigation, the police has filed the charge sheet under Sections 25 & 27 of the Act, 1959. After filing of charge sheet, the trial Magistrate framed charge under Section 25 (1B) (a) of the Act, 1959 and in alternative under Section 25(1)(a) of the Act, 1959.

(4) So as to hold the applicant/accused guilty, the prosecution has examined 7 witnesses. Statement of the applicant/accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

(5) Vide judgment dated 26.02.2014, learned Magistrate has acquitted the applicant/accused of the offence under Section 25(1)(a) of the Act, 1959 *whereas* convicted him as mentioned in paragraph 2 of this judgment.

(6) In an appeal preferred by the applicant/accused, judgment of conviction and order of sentence passed by the trial Magistrate has been affirmed by the appellate Court. Hence this Criminal Revision.

(7) Counsel for the applicant/accused submits that he is not pressing this appeal as regards conviction part of the judgment impugned and would confine

his argument to the sentence part of the same only. According to him, the applicant has already remained in jail for more than one year *whereas* sentence awarded to the applicant is of two years rigorous imprisonment and incident had taken place in the year 2013 and thereby more than 9 years have rolled by since then, he may be sentenced to the period already undergone by him. To this submission of the counsel for the applicant, state counsel has no objection.

(8) I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned with utmost circumspection.

(9) Although learned counsel for the applicant is pressing only the conviction part of the impugned judgment despite that if merits of the judgment is seen, it is seen that Ravi Kumar Yadav (PW-1) and Rajendra Yadav (PW-2) are the seizure witnesses but they have not supported the seizure memo (Ex.P-1) of arms-ammunitions.

(10) R.P. Tiwari, Police Inspector (PW-7) has stated in his evidence that on 18.3.2019 while checking of illegal arms ammunitions, near Jairam Nagar Railway track, he alongwith other police personnel caught hold of the accused and seized 9 country made pistol (katta), 21 live cartridge and one air pistol from his exclusive possession and prepared seizure memo (Ex.P-1). He has also proved the FIR (Ex.P-22) in his court statement, which was lodged on 18.3.2013 itself.

(11) Although independent seizure witnesses namely Ravi Kumar Yadav

(PW-1) and Rajendra Yadav (PW-2) have not supported the seizure memo (Ex.P-1) but Jeevan Jaiswal, Head Constable (PW-4) & Hemant Aditya, ASI (PW-6), who were went along with R.P. Tiwari, Police Inspector (PW-7) for searching of illegal arms ammunitions have fully supported the statement of R.P. Tiwari Police Inspector (PW-7).

(12) Jugal Kishore Singh (PW-3) – Head Constable/Armourer has stated in his evidence that on being examined, 8 out of 9 country made pistol were found in working condition whereas 19 out of 21 cartridge were found in live/working condition. The defence has cross-examined these witnesses in detail but has not been able to elicit anything in their cross-examination to discard their testimony. Although seizure witnesses have not supported the case of the prosecution but merely on the basis of it, evidence of the police personnel could not be discarded specially looking to the seizure of huge quantity of arms ammunitions seized form the exclusive possession of the applicant/accused.

(13) Looking to the aforesaid evidence and material available on record, I find that the trial Magistrate as well as First Appellate Court have rightly held guilty under Section 25 (1B)(a) of the Arms Act, 1959 to the applicant, therefore, the conviction part of the judgment impugned is hereby maintained.

(14) So far as sentence part of the impugned judgment is concerned, as per record of the court below, the applicant has remained in judicial custody from 19.03.2013 to 26.2.2014 (date of judgment of trial Magistrate). During pendency of the appeal, also he was remained in judicial custody from 26.2.2014 till

judgment passed by the appellate Court i.e. on 22.3.2014. Thereafter, he was granted bail on 2.4.2014 by this Court after filing of the instant revision petition and thereby the applicant has remained in jail for more than one year whereas sentence imposed upon him is of only two years rigorous imprisonment. Furthermore, nothing has been mentioned in record of the courts below with regard to previous criminal antecedents of the applicant. Thus, the applicant is sentenced to the period already undergone by him. However, fine sentence, as imposed upon the applicant, is maintained. Appellant is stated to have deposited the fine of Rs.1,000/- imposed by the court below. Thus, sentence imposed upon the applicant is modified to the extent indicated hereinabove.

(15) Accordingly, the criminal revision is partly allowed.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

