

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

301/5

CRA-S-775-SB-2005

Reserved on 18.11.2022

Date of Decision:30.11.2022

Chamkaur Singh

...Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ankur Mittal and Mr. Arnav Sood, Advocates
as Amicus Curiae for the appellants.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J. (Oral)

The present appeal has been preferred against the judgment of conviction dated 06.04.2005 and order of sentence dated 07.04.2005 passed by the learned Additional Sessions Judge, Moga, whereby the appellant had been convicted under Section 25 of the Arms Act and sentenced under Section 25(1B) to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 2000/- alongwith default stipulation.

The FIR in the instant case was got registered by ASI Surjit Singh. In fact, as per the complainant on 15.04.2002, the complainant alongwith other police officials were present under the supervision of Inspector Ram Parkash, Station House Officer, Police Station City Moga and the said officials were present near Gaushala Main Road Smalsar in connection with the case under Sections 399 and 402 IPC and Section 25 of the Arms Act of Police Station

Baghapurana. At that time, the police received a secret information and on the basis of the said information, ASI Surjit Singh, who was heading the police party alongwith Inspector Ram Parkash conducted a raid behind hospital in front of water-works. Six persons, who were present there started running in different directions. ASI Surjit Singh and the other members of his police party chased a person and on apprehending him, he disclosed his name to be Chamkaur Singh @ Kauri son of Surjit Singh, resident of village Saidoke, Police Station Nihal Singh Wala. The search was conducted by ASI Surjit Singh and from the right pocket of the trouser worn by Chamkaur Singh @ Kauri a revolver of 32 bore was recovered and on unloading the revolver, five live cartridges of 32 bores were also recovered. On the body of the revolver, “ made in Webley Scot No. M-821177” was written. ASI Surjit Singh asked Chamkaur Singh @ Kauri about licence and cartridges of the revolver, but he could not produce the licence. ASI Surjit Singh had taken the revolver and cartridges in possession vide a separate recovery memo and a *ruka* was prepared with regard to the commission of the offence under Section 25 of the Arms Act against the accused and it was sent by hand through Constable Iqbal Singh. On receipt of *ruka*, FIR under Section 25 of the Arms Act was registered against Chamkar Singh @ Kauri. The initial investigation was conducted by ASI Surjit Singh at the spot. During the course of investigation, the ammunition was got checked

from Tara Singh, Range Armorer and the test report of the armorer was obtained. For prosecuting the accused under Section 25 of Arms Act, the sanction from the District Commissioner Moga was also obtained and the statements of the various witnesses in the case were also recorded. The rough site plan was prepared and all other investigations as per law were also conducted by the local police. After conclusion of the investigation, report under Section 173 Cr.P.C., was presented in the competent Court.

The copies of the documents under Section 207 Cr.P.C., were supplied to the accused and the case was committed by the Ilaqua Magistrate to the Court of Sessions. The charge for the offence punishable under Section 25 of the Arms Act was ordered to be framed against the present appellant/accused, to which, he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined four witnesses.

Prosecution examined PW1 SI Tara Singh, Range Armourer, Police Line, Ferozepur who stated that ASI Surjit Singh from Police Station Baghapurana produced before him one revolver of 32 bore alongwith five live cartridges of the same bore for test and he had tested the revolver. On his test, it was found to be in working condition and the cartridges were found in live condition and he submitted his test report which his exhibited as Ex.PA on record. In

cross-examination, he admitted that the revolver and cartridges were sealed in the parcel, when it was produced, only he sealed the same after the test. The prosecution examined PW2 Satnam Singh, Reader to the Deputy Commissioner, Moga. He stated that he was conversant with the signatures and initials of the Deputy Commissioner and he had seen the permission for prosecution of the accused, which was Ex.PB and he had identified the signatures of the Deputy Commissioner Moga on the same. In cross-examination, he admitted that the Deputy Commissioner Moga did not sign on Ex.PB in his presence. He did not know whether the ammunition and the record of the police case were produced before the Deputy Commissioner, Moga when he had signed on Ex.PB. The prosecution further examined PW3 ASI Sucha Singh, who was part of the police team, when the revolver and the cartridges were recovered from the accused. He admitted in his cross-examination that there were school and college situated near the place of recovery and the students and staff were residing in college premises and the school. However, no efforts were made to call some respectables from nearby village, school or college. He further admitted that the revolver and cartridges were not made into parcels and no rough sketch of the revolver was prepared as it was numbered one. Even the revolver was not test fired by him. The prosecution further examined PW4 ASI Surjit Singh, who was heading the police team, which apprehended the accused at

the spot and recovery was effected from him. He was the person who had initially conducted the investigation. He supported the case of the prosecution in totality. However, in cross-examination, he admitted that place of recovery was near the G.T. road which was frequently used. Still further, the place of recovery was lying open from all sides and no respectable was called from the nearby school, college and nearby villages. Even, the pistols and the cartridges were not converted into parcels.

After the prosecution closed its evidence, the statement of Chamkaur Singh @ Kauri appellant/accused was recorded under Section 313 Cr.P.C., and the entire evidence was put to him. He pleaded that he had been falsely implicated in this case and no recovery was effected from him. He was apprehended from his house in the presence of respectables of the village. An application was moved by him to the higher authorities regarding apprehension of involvement in a false case.

The accused opted to lead evidence and examined DW1 Surinder Datt, Additional Ahlamd in the Court of Additional Sessions Court. He stated that he could not trace out the original application of Chamkaur Singh. He proved on record postal receipts as Ex.P1 and P2 and the carbon copy of the application of Chamkaur Singh was produced as Ex.P3. The appellant further examined DW2 Sarwan Singh, Ex. Member Panchayat, village Saidoke, Tehsil Nihal Singh

Wala, District Moga. He stated that one or two days prior to Waisakhi in the year 2002, Jagjit Singh, SHO, Police Station Nihal Singh Wala came to the house of Deep Singh Sarpanch of their village. Sarwan Singh and Malkiat Singh, Member Zila Parishad were called there and the SHO asked them to produce the appellant before him. The appellant was handed over to the Station House Officer, who assured that the appellant would be released in the evening but when he was not released and it came to their notice he had been handed over to police of Police Station Smalsar. When they went to Police Station of Police Station Smalsar they were informed that a case has been registered against the accused.

Learned counsel for the appellant has vehemently argued that the appellant has been falsely implicated in the instant case. The appellant was taken by local police from his house and later on, a false case under Sections 399/402 IPC was planted on him. Afterwards, a recovery of 32 bore revolver alongwith five live cartridges was planted on him and the FIR in the instant case was also registered separately by the police due to political reasons. Learned counsel further submitted that even at the time of recovery, the revolver and the cartridges were not sealed into parcels and the recovery was made only in the presence of police officials. Despite availability, no independent witnesses were joined at the time of making recovery by the police. Still further, even the revolver and the

cartridges were not produced before the Deputy Commissioner, when the sanction was granted by the District Commissioner and only on this ground alone, the appellant was liable to be acquitted. Learned counsel further submitted that even the weapon was not test fired by the Range Armorer and the benefit of doubt should have been extended to the appellant.

The submissions made by the learned counsel for the appellant have been vehemently opposed by the learned State counsel, who stated that the testimonies of official witnesses could not be brushed aside only on the ground that they were the members of the police force. The accused has failed to show that the official witnesses were inimical towards him and the recovery of the firearm and cartridges had been proved by the prosecution beyond reasonable doubt. Thus, he prayed for upholding the impugned judgment and order.

I have heard learned counsel for the parties and have carefully perused the record of the learned trial Court.

Learned counsel for the appellant had vehemently contended that as per the case of the prosecution, the raid was conducted by the team of police officials, which comprised of senior police officials as well. The police had shown the recovery of one revolver of 32 bore alongwith five live cartridges of the same bore. PW3 ASI Sucha Singh, who was part of the police team admitted that

there were school and college situated near the place of recovery and still no independent witness was examined. This Court finds force in the contentions raised by the learned counsel for the appellant. The testimony of PW3 ASI Sucha Singh clearly shows that he was one of the members of the police team, which had conducted the raid on 15.04.2002 and apprehended the accused at the spot. He admitted that there were school and college situated near the place of recovery and the students and staff were residing in the college and the premises. However, no efforts were made to call some respectables from the nearby villages or from the school or college. Similarly, PW4 ASI Surjit Singh, Incharge, Police Post Focal Point Moga also admitted that the place of recovery was near G.T. Road, which was frequently used. However, no respectable was called from nearby school, college and villages. Thus, it is apparent that despite availability, no independent witness was joined in the recovery proceedings. Consequently, the case of the prosecution is rendered doubtful on account of non-joining of independent witnesses, despite availability at the time of the alleged raid and the recovery of the 32 bore revolver and cartridges from the accused/appellant. This Court finds strength from the law laid down by this Court in the matter of **Mahavir Vs. State of Haryana and connected matter, 2010(6) R.C.R. (Criminal) 3073; State of Punjab Vs. Ram Chand 2001(1) RCR (Criminal) 817 and State of Punjab Vs. Bhupinder Singh,**

2001(1) RCR (Criminal), 356. Even similar observations have been made by the Hon'ble Supreme Court in the matter of Ritesh Chakarvarti Vs. State of Madhya Pradesh, 2006(4) R.C.R. (Criminal) 480 (SC).

Learned counsel for the appellant has vehemently contended that after the alleged raid, the recovery of 32 bore revolver and the live cartridges have been shown by the police. In fact, no such recovery was effected and the false case was planted on the appellant. The record clearly shows that the revolver and the cartridges were not converted into sealed parcels and in such circumstances, no reliance can be placed on the prosecution case. This Court finds the arguments raised by the learned counsel for the appellant to be valid and the same is liable to be accepted. PW1 SI Tara Singh submitted that revolver and the cartridges were not converted into parcels and even after testing the same, he did not seal the revolver and the cartridges. Similarly, none of the witnesses stated that the revolver and the cartridges were converted into parcels rather PW4 ASI Surjit Singh, who was the Investigating Officer clearly stated that the pistols and cartridges were not made to the parcels. Consequently, the recovery of revolver and the life cartridges was highly doubtful from the present appellant.

Apart from that, the prosecution examined PW2 Satnam Singh, Reader to the Deputy Commissioner Moga, who had exhibited

the permission for prosecution of the accused as Ex.PB, however, he stated that he did not know whether ammunition and record of the police case were produced before the Deputy Commissioner Moga when he had signed Ex.PB. In fact, in the considered view of this Court, the accused is liable to be acquitted on this sole ground alone.

It has been held by this Court in the matter of **Randhir Singh @ Chini Vs. State of Haryana, 2012 (4) RCR (Criminal) 701** as follows:-

*“12. Perusal of the sanction order, Ex.PF, and statements of the witnesses would reveal that the alleged pistol and the live cartridges were not produced before the District Magistrate while he accorded the sanction. In such a scenario, it cannot be conceived that the sanction was accorded after perusing the material recovered and the documents available on record. The mechanical grant of sanction for prosecution is a serious matter. The above view is fortified from the principle of law laid down in **"Sukh Lal and another v. State of M.P." 1998 Criminal Law Journal, 1366**, wherein it was held that grant of sanction was not a mere formality and it has to be proved that the authority had granted the sanction after applying its mind. Further, It must be shown that the fire arm or the weapon with respect to which sanction was prayed was actually taken to the authority concerned and after looking to the relevant papers, understanding and applying his mind, sanction was granted”.*

In view of above discussion, it is held that the judgment of conviction and order of sentence, rendered by the learned trial Court are not based on correct appreciation of evidence and law point. Consequently, by extending the benefit of doubt, the appellant is liable to be acquitted and the impugned judgment of conviction dated 06.04.2002 and order of sentence 07.04.2005 passed by the learned Additional Sessions Judge, Moga, are set-aside and the appellant is ordered to be acquitted of the charge. The appellant is ordered to be released from custody, if not required in any other case.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

30.11, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No