

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

**301/6**

**CRA-S-725-SB-2006**

**Reserved on 18.11.2022**

**Date of Decision:30.11.2022**

Boota 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. As per the complainant on 15.04.2002, the complainant alongwith other police officials was present near Gaushala, Smalsar, on private gypsy, which was driven by Constable Jasvir Singh No. 335 in connection with checking of suspected persons, where inspector Ram Parkash SHO, Police Station City, Moga alongwith certain more police officials met them. On that day, a secret informer

informed SI Jugraj Singh, S.H.O., Police Station Smalsar that Jasvir Singh son of Gurdev Singh Mabi resident of Madiran Nawan, Baljit Singh son of Sadhu Singh resident of Bhai Rupa, Kuldip Singh son of Chhinder Singh resident of Dharam Singh Wala, Boota Singh son of Ajmer Singh, Chamkaur Singh son of Surjit Singh Jat, Mohan Singh @ Mohni son of Gurcharan Singh residents of Saido, Police Station Nihal Singh Wala armed with weapons are making preparation to commit dacoity on the backside of hospital near the college. On the basis of this information, SI Jugraj Singh prepared a ruka for registration of the case under Sections 399/402 IPC and Section 25 of the Arms Act and sent the same for registration of the case to the police station. After making different police parties, raid was conducted at the disclosed place, as per the information of the secret informer and six persons ran towards different sides. The person who ran towards the road side on the right hand side was apprehended by ASI Surjit Singh alongwith H.C. Kishan Lal 683, Constable Lal Chand 449, C. Jagsir Singh 918 and asked his name, who disclosed his name Boota Singh son of Amar Singh caste Masson resident of Saido-ke Police Station Nihal Singh Wala, whose search was conducted by ASI Surjit Singh according to the instructions. A country made pistol of 12 bore was recovered from the right side pocket of the shirt and two live cartridges of 12 bore from the left side of the pocket were recovered. The length of the pistol was about

eight fingers and the length of the butt was seven fingers. Screws were fitted on both the sides of the body of the butt and one stud was fitted on the left side for opening the same. The rough sketch of the pistol was prepared and the pistol alongwith two live cartridges of 12 bore were taken into possession by the police. Rough sketch and the memos were got attested from the witnesses. An inquiry was made to Boota Singh and he was directed to produce the licence for keeping the pistol in his possession. However, he failed to produce the same and consequently the ruka was served for registration of the criminal case.

After completion of the investigation, the final report under Section 173 Cr.P.C., was presented against the appellant/accused.

In compliance of the provisions of Section 207 Cr.P.C., copies of the challan were supplied to the accused. Ultimately after commitment, the Court of learned Additional Sessions Judge, Moga, held that *prima facie* offence under Section 25 of the Arms Act was made out against the appellant and he was charge sheeted accordingly. The appellant/accused pleaded not guilty and claimed trial.

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

Prosecution examined PW1, SI Tara Singh, Range Armourer, Police Line Ferozepur who tested the pistol and it was

found to be in working condition. After the test, he gave his test report Ex.PA. He handed over the pistol and the cartridges alongwith his test report Ex.PA to HC Jaspat Rai. However, in cross-examination, he admitted that the pistol and cartridges were not sealed when produced before him nor he sealed the same after his test report. The prosecution further examined PW2 HC Krishan Kumar, who was member of the police party headed by ASI Surjit Singh. He alongwith other police officials had conducted the raid and it was found that the appellant/accused was carrying one country made pistol of 12 bore and two live cartridges of 12 bore in his pocket and the same was recovered from him. However, in cross-examination, he admitted that the place of recovery was situated at a distance of about 2 /2.5 killas from the main road. The raid in question was conducted on G.T. Road and no private witness was associated with the police party. The prosecution further examined PW3 Satnam Singh, reader to the District Magistrate, Moga, who identified the signatures of the then District Magistrate on the sanction for prosecution Ex.PF. Still further, the prosecution examined PW4 ASI Surjit Singh, who was part of the police party which had conducted the raid. He apprehended the appellant and conducted his personal search in the presence of HC Krishan Chand and Constable Lal Chand and one country made pistol of 12 bore alongwith two live cartridges of the same bore were recovered from him. The said witness also admitted

in the cross-examination that the place of recovery is situated near G.T. Road and which is situated at an open place. He further admitted that school is also situated near the said place and efforts were made to join certain persons, but none met them at that time. He admitted that the pistol was not sealed nor its parcels were prepared.

After the closure of the evidence, the entire case/incriminating circumstances were put to the accused under Section 313 Cr.P.C., and he stated that nothing incriminating was recovered from him and had been falsely implicated in the instant case. The accused did not lead any evidence to prove his innocence.

The learned counsel for the appellant submitted that he had been falsely implicated in the instant case. The appellant was taken by the local police from his house and later on a false case under Sections 399/402 IPC was planted on him. Later, a recovery of a pistol of 12 bore and two live cartridges was planted on him and the FIR in the instant case was also registered due to political enmity in the village. It was further submitted that even at the time of the recovery, the pistol and the cartridges were not sealed into parcel and recovery was made only in the presence of police officials. Despite availability, no independent witness was examined. Still further, even the revolver and the cartridges were not produced before the Deputy Commissioner, when the sanction was granted by the Deputy Commissioner. The learned counsel further submitted that

even the weapon was not test fired by the range armourer and the benefit of doubt may be extended.

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 pistol of 12 bore alongwith two live cartridges of the same bore. PW2 HC Krishan Kumar, 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 PW2 HC Krishan Kumar 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 12 bore pistol 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 12 bore pistol 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 converted into the parcels. Consequently, the recovery of revolver and the life cartridges was highly doubtful from the present appellant.

Apart from that, the prosecution examined PW3 Satnam Singh, Reader to the Deputy Commissioner, Moga, who had exhibited the permission for prosecution of the accused as Ex.PB. However, his evidence does not show as to whether the ammunition and the records of the police case were ever produced before the Deputy Commissioner, Moga, when he had signed Ex.PB. It must be

shown that before granting sanction, the entire police file had been produced before the District Magistrate and the sanction for prosecution was granted after due appreciation of the same.

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