

Sl. 83
24.3.2023
Court No.35
Sc

CRA 564 of 2011

In Re: - An appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

And

In the matter of: **Ainul Khan & Anr.**

....Appellants

Ms. Kaberi Mukherjee

...For the Appellants
appointed as *amicus curiae*

Mr. Pravas Bhattacharcharya
Mr. Mirza Firoj Ahmed Begg.

...For the State

Two appellants who are amongst the three accused persons in Goaltore Police Station Case No.11 dated 1st April, 2009 under Sections 121/121A/122/123/124A of the Indian Penal Code and under Sections 25/27/35 of the Arms Act, have preferred the instant appeal challenging the impugned judgment and order of Additional Sessions Judge, 5th Court at Paschim Medinipur dated 30th July, 2011 and 1st August, 2011 respectively in Sessions Trial No.IV/August/2009. Both the appellants have been convicted in the same under Section 25(i)(a) of the Arms Act and have been sentenced to suffer Rigorous Imprisonment for four years and to pay a fine of Rs.1000/- each.

They have also been directed to suffer Rigorous Imprisonment for one month more each, in default of payment of fine, as above.

The appellants have pleaded the ground of the impugned judgment of the trial court being devoid of due consideration as to

the facts of the case as well as de hors of the proper legal provisions to have been applied to it. The appellants have prayed for setting aside of the judgment and order as impugned in this appeal.

In this appeal lodged back in the year 2011, no one appeared on behalf of the appellants. Hence, the Court appointed Ms. Kaberi Mukherjee as *amicus curiae* in this case where as Mr. Pravas Bhattacharya has represented the State in this appeal.

At the out set it is noted from the submissions made on behalf of the parties that the appellants had been earlier directed to suffer sentence of Rigorous Imprisonment of four years and pay a fine and has already been served out the period of sentence being incarcerated as an under trial prisoner, their appeal being pending in the Court.

In this appeal the prosecution has examined 15 witnesses. Excepting P.W. 2, all other witnesses are police personnel.

P.W. 2 is the owner of the car used by the present appellants in commission of the alleged offence.

P.W. 15 is the police personnel as well as the ballistic expert.

Before going into the evidence of the respective witnesses the allegations made in the F.I.R. may once be looked into. The *de facto complainant* is a police personnel who stated to have proceeded to the place of occurrence to workout a source information, that a group of Maoist is collecting arms and ammunitions to wage war against the established Government of the State. The time of occurrence is stated to be at 23.45 hours. The offending vehicle was detained at 00.45 hours (Ambassador Car No.BR-53/5699). The present appellants are said to have been found sitting in the

back seat of the said vehicle. The following are stated to have been recovered from the said vehicle :

- i) small arms (improvised one shutter);
- ii) one packet of ammunition containing 10 each;
- iii) one small arm (improvised one shutter) along with one packet of ammunition containing 10 rounds from the driver of the vehicle;
- iv) from under the driver's seat 8 pieces of iron pipe fitted with improvised foresight knave each and 4 pieces of improvised trigger chamber (for laying improvised fire arms);
- v) 4 booklets in Bengali and 2 in English;
- vi) cash amount of Rs.10,200/-.

The two appellants and the driver of the vehicle were arrested from the spot of occurrence. The offending vehicle was also seized.

Therefore, the *de facto complainant* has alleged in the F.I.R. that the appellants have been carrying on the above stated articles, which were subsequently seized during operation, for aiding Maoist's anti national activities. Hence, a case was lodged under Sections 121/121A/122/123/124A of the Indian Penal Code and under Sections 25/27/35 of the Arms Act.

All the witnesses excepting P.W.-2 have duly and categorically supported the prosecution case. From the evidence of all the witnesses the fact that police apprehended the two appellants on the night of incident along with illegal arms and ammunitions, money and the offending vehicle are categorically brought on record by the prosecution. The evidence of the witnesses have been consistent and coherent in the trial. The police personnel who have deposed in the

Court in the trial have appeared to be the eye-witnesses of the incident and the defence has not been able to shake the consistent nature of the prosecution witnesses.

There are exhibited documents relied on by the prosecution as well as the material exhibits which are proved adequately and duly by the prosecution in this case. Those documentary and material evidences duly support the substantive evidence of the witnesses in the trial. Considering the substantive evidence of the witnesses being duly corroborated by the said documentary and material evidences, there remains no scope of any doubt that the prosecution in this case has been able to bring home the charges against the accused persons, duly and sufficiently.

Accordingly, in my considered opinion there is no reason and scope for this appeal Court to interfere with the order of conviction of both the appellants in this case. Hence, conviction of the appellants for an offence punishable under Section 25(i)(a) of the Arms Act, is not interfered with in this appeal.

Here comes the question of adequacy of the order of the trial court regarding sentence granted. As stated earlier, the appellants have been granted sentence to suffer Rigorous Imprisonment for four years each, along with direction to pay a fine.

As discussed earlier, both the appellants have already undergone period of four years in custody as an under trial prisoner, during pendency of the present appeal and have been released from the correctional home after expiry of the said period of time. Considering the same, it is found proper that the sentence portion of the impugned judgment be interfered with by this Court directing

that the appellants are sentenced for a period as already undergone by them, in the course of the appeal. However, the sentence of payment of fine shall operate as it is, as directed by the trial court.

With the observation as above, this appeal is **allowed in part**.

The appeal, **CRA 564 of 2011** is **disposed of** along with the application, if any.

Urgent photostat certified copy of this order, if applied for, be furnished on usual undertaking.

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RAI

CHATTOPADHYA

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CHATTOPADHYAY

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(Rai Chattopadhyay, J.)