

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

CRR-1126-2008(O&M)

Reserved on: 15.12.2023

Pronounced on: 22.12.2023

PRITAM SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Abhaysher Singh, Legal Aid Counsel, for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab.

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SANJIV BERRY, J. (ORAL)

By way of the criminal revision, the petitioner has assailed the judgment dated 24.05.2008 vide which learned Sessions Judge, Bathinda, upheld the judgment dated 04.07.2007, passed by learned Judicial Magistrate Ist Class, Phul, whereby the petitioner was convicted under Section 25 of Arms Act and sentenced to undergo rigorous imprisonment for one year and pay fine of ₹1,000/- and in default thereof, further Rigorous Imprisonment of 15 days.

2. The brief facts of the case are that on 26.09.1999, at about 9:00 A.M., Pritiam Singh (the present revisionist) was apprehended on suspicion and from the right DUB of his pyjama .12 bore country made pistol along with a live cartridge inside it, was recovered and was found to be without any licence or permit. Further, three currency notes of the denomination of ₹50/- each were also found. Challan was filed and proceedings under Section 25 of Arms Act were initiated. Learned Judicial Magistrate Ist Class, Phul, vide judgment dated 04.07.2007 titled “State vs. Pritam Singh @ Amarjit Singh” convicted the revisionist under Section 25 of Arms Act to undergo rigorous imprisonment for one year and a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

3. Aggrieved by the said judgment, the revisionist filed an appeal before the Sessions Judge, Bathinda, which was dismissed vide order dated 24.05.2008. Hence, the present revision petition.

4. Learned counsel for the petitioner has assailed the judgment of learned Courts below by submitting that they have failed to appreciate evidence in correct preposition and have not considered the aspect that from the evidence adduced by the prosecution no case is made out against the

petitioner for having committed the alleged offence under Section 25 of the Arms Act. He submitted that apart from the discrepancies in the statement of the prosecution witnesses there are other material irregularities in the trial which have skip the observations of learned Courts below. He contended that the Armourer who had allegedly tested the weapon has not been examined by the prosecution nor his alleged report has been proved on record in accordance with law. He submitted that even the sanction to prosecute given by the District Magistrate in this case is defective as the weapon was not produced at the time of obtaining sanction. He further contends that that the petitioner has been falsely implicated in this case and this fact is evident from the fact that no independent corroboration of the police witness is there qua the alleged recovery and even the sole independent witnesses has been given up by the prosecution. He further referred to the evidence to say that the weapon after being allegedly sealed, the seal, after use, was not handed over to independent witnesses but was kept with the investigating officer which also create doubt regarding the genuineness of the prosecution version. He further submit that the petitioner has no criminal antecedents and has been facing the trauma of the instant falsely planted case since 1999 and as such prayed for acceptance of the

petition.

5. These arguments have been controverted by learned counsel for the State by arguing that the petitioner was found keeping in his possession country made pistol along two cartridges which he was carrying without any licence or permit, when apprehended by the police and after thorough investigation the challan was presented in Court. He submits that the prosecution has examined the witnesses who have duly proved the case of the prosecution beyond shadow of doubt and the petitioner was rightly convicted by learned Magistrate and his appeal has also been lawfully rejected vide the impugned order. So far as non examination of independent witnesses are concerned he submits that these witnesses were not examined having been won over as such he prayed for dismissal of the present petition.

6. After considering the rival contentions and perusing the record with the assistance of learned counsel for the parties, it transpires that the instant FIR was registered against the petitioner on 26.09.1999 when on suspicion the police party apprehended him and from his possession one country made pistol and two live cartridges are said to be recovered. As per the prosecution case, since, the petitioner could not produce any licence or permit, the weapon along with cartridges were taken into police possession

duly sealed vide recover memo Exhibit P-3 and on the basis of Ruka Exhibit P-6, FIR was registered.

7. After completion of investigation, challan has been presented in Court, charges framed, which the petitioner pleaded not guilty and claimed trial.

8. The prosecution in order to prove its case has examined PW1 HC Darshan Singh, ASI Gurjit Singh PW-2, PW-3 HC Surjit Singh, PW-4 ASI Om Parkash and PW-5 Ajit Singh, Junior Assistant. The independent witnesses Balbir Singh was given up being won over. No defence evidence was lead.

9. The learned Magistrate on the basis of the evidence proceeded to pass judgment dated 04.07.2007 thereby convicting the petitioner for having committed offence under Section 25 of Arms Act and sentencing him to under go rigorous imprisonment for one year and fine of ₹1000/- and in default thereon further rigorous imprisonment for 15 days.

10. On appeal being preferred, the learned Sessions Judge also upheld the same conviction and dismissed the appeal.

11. So far as the arguments raised by the petitioner qua non examination of the Armourer is concerned the perusal of record reveals that

he could not be examined on account of his death. Although the prosecution has tendered the report given by the Armourer as Exhibit P-2 in the statement of learned Additional Public Prosecutor for the State but the courts below have erred in accepting the same as *per se* admissible. In this context, it is worth mentioning that although reports of certain scientific expert may be used as evidence as per Section 293 of Cr.P.C 1973 but it is to be taken note of that the provisions of this Section applies only to the Government Scientific Expert fully detailed in Section 293(4) of the Cr.P.C which reads as under:-

“293. Reports of certain Government scientific experts.— (4)

This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director [, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

(g) any other Government scientific expert specified, by

notification, by the Central Government for this purpose.”

12. The perusal of the aforesaid provision reveals that the Armourer does not find mention in the list of the Government Scientific Experts under Section 293(4) nor is there any notification issued by the Government for this purpose as per Section 293(4)(g) of the Cr.P.C. Even though the Armourer had expired, the prosecution was supposed to prove his report Exhibit P-2 in accordance with law rather than tendering the same in evidence in statement of Additional Public Prosecutor for the State which could not be considered as due discharge of onus. Both the Courts below have failed to consider this aspect and have relied upon the report Exhibit P-2 as it *per se* admissible. It is the case of the prosecution solely resting on Exhibit P-2 on the basis whereof it has been alleged that the country made pistol allegedly recovered from the petitioner was in working condition but for the reasons mentioned above this report has no evidentiary value.

13. Another factor raised by learned counsel for the petitioner is regarding non production of the weapon before the District Magistrate at the time of obtaining the sanction to prosecute and has referred to the judgment

1998(1) MPLJ 288 Sukhlal Banshi Lodhi and another Vs. State of M.P.

14. In the present case the prosecution has examined PW-5, Ajit Singh. who has proved the sanction by District Magistrate as Exhibit PW-5/A by identifying his signature however he has not categorically admitted that he is not aware of the receipt number or dispatch number when the said file was received in the office nor the sanction was granted in his presence and he has simply brought the file from the record to say that it is sanction by the District Magistrate. A perusal of the sanction Exhibit PW-5/A given by the District Magistrate on 16.02.2000 reveal that he had given sanction after considering the documents on the police file and is silent as to the fact that whether the weapon was ever produced before him by the police before getting the sanction. Faced with the situation the judgment referred to by the learned counsel for the petitioner applies to full force to the facts and circumstances of the present case wherein it has been specifically held that the sanction by the District Magistrate is not a mere formality and has to be proved that it was granted after applying his mind and also the fact that the weapon regarding which the sanction was required had infact been taken actually to the concerned authority. In the present case nothing is on record adduced by the prosecution that the weapon was ever taken to the District Magistrate before getting sanction and even sanction Exhibit PW-5/A in this

regard is also silent. At the cost of repetition it is worth mentioned that in the sanction Exhibit PW-5/A the District Magistrate has categorically said that the District Magistrate formed his opinion after going through the police file and nothing is there that the weapon was ever produced before the authority before obtaining sanction. As per Section 39 of the Arms Act prior sanction of the competent authority i.e. District Magistrate is necessary for launching prosecution in respect of any offence under the Act and admittedly such sanction is not a mere formality but has to be proved to have been accorded by the District Magistrate after applying his mind which hopelessly is lacking in this case and even there is nothing brought on record to suggest that the alleged weapon was ever produced before the sanctioning authority before according the aforesaid sanction.

15. A perusal of evidence although reveals certain minor discrepancies the same are not material enough to discard the case of the prosecution, however, at the same time the aforesaid technical defects in the case of the prosecution have skipped the observation of learned Courts below. Therefore, considering the fact that the report of Armourer has not been proved on record in accordance with law, no offence under Section 25 of the Arms Act could have been attracted to the facts of the present case.

16. As a consequent, in the light of the above discussion finding merit in the present Revision and giving the benefit of doubt the petitioner who is facing trial in the present case since 1999 is hereby acquitted by accepting the present Criminal Revision.

17. Criminal Revision stand allowed accordingly.

18. Pending application(s) if any shall also stand disposed of.

(SANJIV BERRY)
JUDGE

22.12.2023

Gyan/preeti

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |