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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-631-SB-1998 (O&M)
Date of decision: 30.05.2024

Satish Kumar

...Appellant

Vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Vermani, Advocate
for the appellant.

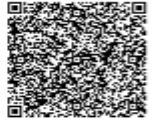
Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.(Oral)

1. Present appeal has been preferred against judgment of conviction dated 27.07.1998 passed by learned Additional Sessions Judge, Gurgaon, in FIR No.53 dated 25.01.1995 under Section 25 of the Arms Act, 1959 (for short ‘Arms Act’), registered at Police Station City Gurgaon. Vide order of sentence dated 28.07.1998, the appellant had been sentenced as follows:

Offence under Section	Sentence
Section 25 of Arms Act	Rigorous imprisonment for 3 years and a fine of Rs. 1000/-, in default of which further rigorous imprisonment for 6 months

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2. Briefly, the facts are that on 24.01.1995, ASI Charan Dass was present at Pataudi Chowk in connection with investigation of another case, when he apprehended the appellant on suspicion. A search was conducted and a country made pistol along with 0.12 bore cartridges were recovered from the appellant.

3. On assessing all the material available on the record, learned trial Court, vide judgment of conviction dated 27.07.1998 and order of sentence dated 28.07.1998, convicted the appellant for the offence under Section 25 of Arms Act and sentenced to undergo the sentence as stated above. Aggrieved by the same, the appellant has preferred the present appeal. While admitting the appeal vide order dated 11.08.1998, sentence of the appellant was suspended by this Court.

4. Learned counsel for the appellant contends that no sanction was obtained from the District Magistrate before initiating prosecution for the alleged offence, as such learned trial Court could not have tried the case in the first place. Moreover, neither an independent witness was joined at the time of search and recovery nor an attempt to do the same was recorded by the police. Furthermore, there are material contradictions between the statements of PW2- Constable Ashok Kumar and PW4- ASI Charan Dass. For instance, PW2- Ashok Kumar claims that they left the police station at 6.00 p.m. and went to Arjun Nagar before arriving at Pataudi Chowk, whereas PW4-Charan Dass stated that they left the police station at around



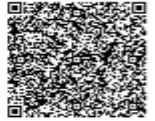
8.00/9.00 p.m. and directly went to Pataudi Chowk. Finally, the appellant had already been acquitted in a connected FIR No.52 dated 24.01.1995 under Section 307/34 IPC, registered at Police Station City Gurgaon vide judgment dated 20.10.1995 for the lack of any incriminating material against him. Reliance in this regard is placed on the judgments rendered by the Delhi High Court in *Pawan Kumar Vs. The Delhi Administration, 1989 CriLJ 127*, *Smt. Javitri Devi Vs. State, 1971 CriLJ 1340*, this Court in *Manpreet Singh Vs. State of Punjab* in *CRM-M-30499-2014* decided on 16.01.2017 and a Division Bench of the Himachal Pradesh High Court in *State of H.P. Vs. Tape Ram and another, 2012(7) R.C.R. (Criminal) 56*.

5. Per contra, learned State counsel supports the impugned judgment of conviction and submits that the same has been rendered on correct appreciation of facts and evidence and as such, does not warrant interference by this Court.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the sanction from the District Magistrate as made mandatory by Section 39 of Arms Act, was not obtained before initiating the prosecution. Section 39 of the Arms Act reads as follows:

“Section 39. Previous sanction of the district magistrate necessary in certain cases.—

No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of



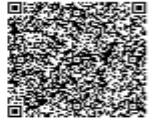
the district magistrate.”

7. It is trite law that if a special enactment, like the Arms Act, lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, such provisions must be scrupulously adhered to. Further, the Hon’ble Supreme Court in ***Avtar Singh and another Vs. State of Punjab, AIR 2023 SC 1588*** has categorically held the following:

*“It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to ***Dharani Sugars and Chemicals Ltd. Vs. Union of India and others*** reported in (2019) 5 SCC 480.”*

8. The procurement of sanction from the District Magistrate is a mandatory condition precedent to initiating prosecution for offences listed under Section 3 of the Arms Act and cannot be dispensed away with. Admittedly, the same was not obtained before starting criminal prosecution against the appellant. The bypassing of procedural justice often prejudices the trial and impedes the constitutional right of the parties to free and fair trial. While it is true that procedure is the handmaid of justice, however, pragmatic judicial practice requires that only when it is expedient in the interest of justice and does not cause prejudice to the prosecution or the defence, that deviation from the procedure may be made. Otherwise, any such deviation from the procedural safeguards would be impermissible and

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would defeat the ends of justice. Furthermore, the appellant has already been acquitted in FIR No.52 dated 24.01.1995 under Section 307/34 IPC, registered at Police Station City Gurgaon vide judgment dated 20.10.1995, of which the present case is an offshoot.

9. In view of the discussion above, this Court is of the considered view that the case of the prosecution suffers from incurable illegality. Accordingly, the present appeal is allowed and the impugned judgment of conviction dated 27.07.1998 as well as the order of sentence dated 28.07.1998 passed by learned Additional Sessions Judge, Gurgaon are hereby set aside and the appellant is acquitted of the charge framed against him.

10. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

30.05.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No