

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

CRR-1795-2023 (O&M)
Reserved on: 09.02.2024
Pronounced on: 13.02.2024
2024:PHHC: 019562

MANISH AND ANOTHER

. . . . PETITIONER

Vs.

STATE OF HARYANA

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ashutosh Gupta, Advocate, and
Mr. Pranshul Dhull, Advocate, for the petitioners.

Mr. Pawan Kumar Jhanda, DAG, Haryana.

DEEPAK GUPTA, J.

This revision is against the concurrent finding of conviction.

2. The two petitioners Manish and Mahesh were tried by the Court of Ld. Judicial Magistrate 1st Class, Gurugram in criminal case bearing CNR N: HRGR03-009597-2015, arising out of FIR No.376 dated 14.05.2015, registered at Police Station Civil Lines, Gurugram under Section 25 of the Arms Act, 1959. Vide judgment dated 13.03.2018, both of them have been found to be guilty and convicted under Section 25 of the Arms Act. Vide a separate order dated 14.03.2018, both of them were sentenced to undergo rigorous imprisonment for a period of 1 year and also to pay fine of ₹5000/- each, with default sentence of 1 month. Against the said conviction and sentence, petitioners filed appeal. However, the criminal appeal, bearing CNR No. HRGR01-004761-2018, has been dismissed by Id. Additional Sessions Judge, Gurugram vide judgment dated 01.08.2023. Petitioners have now approached this Court.

3. The case of prosecution is that on 14.05.2015, ASI Shri Bhagwan

along with Head Constable Om Prakash and other police officials was present at Sector 14 market, Old Delhi Road on crime patrolling duty, when he received secret information that Manish, Mahesh, Pardeep and Ravi indulged in exporting the illegal weapons from UP and that on that day, they were having pistols/kattas and if raid is conducted, they could be caught red handed. Relying on the information, ASI Shri Bhagwan along with the police team, reached on the disclosed place i.e. Prince PG Rajiv Nagar. At the sight of the police party, two persons tried to flee away. They were apprehended and disclosed their names as Manish and Mahesh (petitioners), whereas two others succeeded in fleeing away. The search of Manish resulted in recovery of 2 country-made pistols from the pocket of his lower. Similarly, the search of petitioner-Mahesh also resulted in recovery of 2 pistols besides live cartridges. Measurements of the recovered pistols were taken. Their sketches were prepared and then the same were taken into possession vide separate seizure memos. FIR was registered. Report of the Armorer was obtained. Statements of witnesses were recorded and after completion of investigation, final report under Section 173 CrPC was filed.

4. During trial, prosecution examined 8 witnesses including the IO of the case ASI Shri Bhagwan, who supporting the prosecuting case proved the recovery. His statement found corroboration from the recovery witnesses, namely, PW6A HC Om Parkash and PW3 Constable Rakesh Kumar. These witnesses also proved the seizure memos and the sketches apart from the pistols and cartridges, which were recovered from the petitioners and as were produced in the Court during their testimony. Apart from these witnesses, prosecution proved on record the report of the armorer, the FIR, the sanction order etc. After appreciating the evidence produced by the prosecution,

recording of the statements of the accused under Section 313 CrPC, providing them opportunity to lead evidence in their defence and hearing both the sides, the trial Court recorded conviction as noticed above, which has been upheld by the appellate Court.

5. Assailing the aforesaid concurrent finding, it is contended by Id. counsel that Courts below have not applied their judicious mind and the impugned judgments are based upon conjectures and surmises; that case of the prosecution was not proved beyond doubt, inasmuch as no independent witness from the locality was called to join the proceedings at the time of alleged recovery. Still further, it is argued that ASI Shri Bhagwan, who received the information and thus, became the informant of the FIR, also investigated the matter, which is not permissible. The alternative prayer made by Id. counsel for the petitioners is that in case Court is not inclined to set aside the conviction, then looking to the age of the petitioners, they be released on probation.

6.1 Ld. State counsel has refuted all the aforesaid contentions and opposed both the prayers. It is argued that impugned judgment of the trial Court is based on proper appreciation of evidence produced on record; that it is not the law that evidence of the police officials cannot be believed unless it is supported by the independent witness; that there is neither allegation nor any evidence that any of the police officials had animosity with the petitioners-accused and that by way of a well reasoned order, conviction has been rightly recorded, which has been duly appraised by the Sessions Court, who then affirmed it, and so there is no reason to interfere in the same.

6.2 Ld. State counsel further submits that offence under Section 25 of the Arms Act is punishable with a minimum sentence of 3 years and that trial Court has already taken a lenient view by imposing a sentence of 1 year

only and that looking into the allegations proved against the accused, inasmuch as they were found to be in possession of 4 country-made pistols and live cartridges, they do not deserve any leniency so as to release them on probation.

7. I have considered submissions of both the sides and appraised the record.

8. After going through the impugned judgment of conviction as recorded by the trial Court, which has been affirmed by the appellate Court, I do not find any merit in this revision.

9. First of all, it may be noticed that revisional Court is not required to re-appreciate the evidence so as to interfere in the concurrent findings of facts recorded by the trial Court and the Sessions Judge. It has been held in ***State Of Maharashtra vs Jagmohan Singh Kuldip Singh Anand & Ors: AIR 2004 SC 4412*** as under:

“The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.”

10. Still further, in ***Raj Kumar vs State Of H.P: AIR ONLINE 2008 SC 340***, Hon’ble Supreme Court held:

“8. In State of Orissa v. Nakula Sahu and Ors. (AIR 1979 SC 663) it was held that the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In State of Kerala v. Puttamana Illath Jathavedan Namboodiri (1999 (2) SCC 452) it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

11. In the light of the aforesaid legal position, when the impugned judgments are perused, this Court does not find any illegality or impropriety so as to interfere in the concurrent finding of fact, based on proper appreciation of evidence, resulting in conviction.

12. As far as the contention raised by counsel for the petitioner to the effect that an independent witness from the public was not joined at the time of recovery or that the informant became the IO, none of them have any legal base.

13. Court cannot lose sight of the practical position, in which the police officials have to work. Nowadays, public apathy is much known in matters in which police or court is involved. Nobody likes to come forward or join the proceedings even at the asking of the police for obvious reasons, as nobody wants to get entangled in the future proceedings as he has to take rounds in the police station and the courts. For this apathy on the part of public, police cannot be blamed nor can be distrusted.

14. It has been observed by Hon’ble Supreme Court in *State Govt. of*

NCT of Delhi Vs. Sunil 2001(1) RCR (Crl.) 56 that:

“court cannot start with the presumption that police records were untrustworthy and rather, as a proposition of law, presumption should be other way around and that official acts of the police are regularly performed is a wise principle of presumption and recognised even by the legislature.”

In another case titled ***Ravinder Vs. State of Maharashtra 2002(3) RCR (Crl.) 598***, the case was based on statements of official witnesses. No independent witness was examined. It was held by Hon’ble Supreme Court that official (police) witnesses cannot be discarded merely on the ground that they belonged to the police force and are either interested in the investigating or the prosecuting agency. It was held by Hon’ble Supreme Court further that prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible, corroboration of their evidence in material particulars should be sought. The desire of such witnesses to see the success of the case based on their investigation requires greater care to appreciate their testimony.

15. Similarly in ***Punjab and Haryana High Court, Chandigarh through its Registrar (General) Vs. Om Parkash Chaudhary and others 2006(2) RCR (Crl.) 426***, it was held by a Division Bench of this Court that testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. It was further held that the presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. .

16. In view of the aforesaid discussion, it is held that there is no

merit in the revision petition and as such, the revision against conviction is dismissed.

17. As far as the impugned order of sentence is concerned, it is to be noted that after the amendment of Section 25 of the Arms Act w.e.f. 14.12.2019 by way of amendment Act No.48 of 2019, the minimum sentence provided for offence under Section 25 of the Arms Act is 7 years, though it may extend to imprisonment for life. Since in the present case, crime was committed in May 2015 and provisions of that time are to be taken into consideration, it is found that even at that time, Section 25 of the Arms Act provided for punishment of imprisonment for a term, which shall not be less than 3 years, though it may extend to 7 years besides fine.

18. In the present case, ld. trial Court has imposed a sentence, which is less than the minimum sentence, which was required to be imposed. Neither ld. trial Court appears to be have gone into the relevant provisions while awarding sentence nor the Sessions Court looked into this aspect. At the same time, this Court, exercising its revisional jurisdiction, is not inclined to enhance the sentence, as even the State has not preferred to challenge the order of sentence. The nature of the offence committed by the petitioners is such that they are not entitled for grant of probation. As such, no merit is found in the alternative prayer made by ld. counsel for releasing the petitioners on probation.

Dismissed.

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

(DEEPAK GUPTA)
JUDGE

13.02.2024
Vivek

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes