



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

CRM-M-46876-2022
Reserved on: 28.10.2024
Date of decision: 12.11.2024

Deepak and Another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Jasbir Mor, Advocate for the petitioners.

Mr. P.K. Aggarwal, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C for quashing of FIR No.130 dated 05.05.2021 Annexure P-1, registered under Sections 25, 27 and 30 of Arms Act and Section 309 of IPC, registered at Police Station Sector-6, Bahadurgarh, District Jhajjar and all other consequential proceedings arising therefrom.

2. The brief facts of the case of prosecution are that police recorded statement of injured Deepak wherein, he stated that he is a wrestler and on 18.04.2021 at about 9 PM, he went in his swift car No.HR-13-J-4447 to meet his friend Ravinder son of Gian Singh resident of Bahadurgarh. On the way, said Ravinder met him near ITI Bahadurgarh. Then Ravinder sat on the front seat while he himself was sitting on the driver seat of aforesaid car and they started talking with regard to game of wrestling. In the meantime, Ravinder took out his licenced revolver and placed it on one side. Then Ravinder got busy in attending a phone call and Ravinder also got down from the car while attending the phone call. Then, he picked up the licenced revolver of Ravinder and started checking its barrel and accidentally, the trigger was pulled and shot was fired which hit on his forehead. On hearing the sound of fire arm shot, Ravinder immediately



came for help and attended him and also informed his family about the incident. He was taken to Brahm Shakti Hospital, Bahadurgarh for his treatment. He further stated that no one is responsible for the aforesaid incident. On the basis of the said statement of injured Deepak, FIR Annexure P-1 was registered by the police against Deepak and his friend Ravinder.

3. In response to the notice of motion, the State appeared through its counsel and filed reply by way of affidavit of Dharamvir Singh, Deputy Superintendent of Police, Bahadurgarh, District Jhajjar which was taken on record along with documents Annexures R-1 to R-6.

4. The counsel for the petitioners has submitted that it was a case of accidental firing. There is nothing available on the record to *prima facie* establish that Deepak misused the licenced revolver of his friend Ravinder and attempted to kill by shooting himself. Even, Ravinder has given his affidavit that it is a case of accidental shot fired from his licenced revolver by Deepak, who at the time of the incident was handling the said pistol. It has been further contended that even the police official who initially inquired into the matter, came to the conclusion that no cognizable offence is made out, in the present case. The counsel for the petitioners has further argued that no one was responsible for the accidental firing of a shot. That in the given circumstances, the prosecution of the petitioners on the basis of FIR Annexure P-1 would amount to misuse of the process of Court and law as well and further it will result into miscarriage of justice.

5. On the other hand, the State counsel while referring to written reply and documents Annexures R-1 to R-6 has *inter alia* contended that the facts and circumstances of the case clearly indicate that at the time of occurrence, Deepak made an attempt to kill by shooting himself with the licenced revolver of co-accused Ravinder and the said shot hit in the forehead of Deepak but he was saved as was provided timely treatment. It has been further argued that the weapon used in commission of crime was owned by co-accused Ravinder, who was negligent and did not keep his licenced revolver in safe and proper custody. That *prima facie* offence under Section 309 IPC is made out against Deepak who attempted to



commit suicide by shooting himself with licenced revolver of co-accused Ravinder. Further, the licenced revolver of Ravinder was misused in violation of the provisions of Arms Act of 1959. On culmination of investigation, the police presented its final report under Section 173 Cr.P.C against both the petitioners. It has been further submitted that the present petition deserves to be dismissed being devoid of merits.

6. I have considered the submissions made by counsel for the parties.

7. Earlier in case of ***P.Rathinam Vs. Union of India 1994 SCC (3) 394***, it was held that provision of Section 309 IPC is self cruelty and irrational and violative of Article 21 of the Constitution of India. Subsequently, the said decision was overruled by five Judge Bench of Hon'ble Supreme Court in ***Lokendra Singh Vs. State of M.P. 1996 SCC (2) 648***.

8. Now adverting to the facts of the present case, which was registered on the basis of the statement of petitioner No.1 Deepak, it appears that petitioner No.1 got recorded his statement to the police to the effect that while he was checking the barrel of licenced revolver of petitioner No.2, the trigger was accidentally pulled and shot hit his forehead. To this effect, petitioner No.1 has also given his affidavit. Even petitioner No.2 Ravinder has also given his affidavit on the same lines. Thus, it appears to be a case of an accidental firing. There is nothing on the record to *prima facie* establish that the shot in question was fired intentionally by petitioner No.1 by using licenced revolver of petitioner No.2, to kill himself. Prosecution has failed to show that petitioner no.1 was having any intention to end his life by committing suicide by shooting himself in head using licenced revolver of petitioner No.2. The circumstances suggest that petitioner No.1 was handling the aforesaid weapon and while doing so, an accidental shot was fired. Thus, it appears that petitioner No.1 was having no *mens rea* to kill himself by committing suicide at the time of alleged occurrence.

9. The Hon'ble Supreme Court in Criminal Appeal No.2373 of 2010 titled ***Surinder Singh Vs. State (UT of Chandigarh)***, decided on 26.11.2021 has held that the illegal use of a licenced weapon *per se* does not



constitute an offence under Section 27 of Arms Act.

10. In order to substantiate the offence under Section 25 of Arms Act, the prosecution shall have to *prima facie* establish that the accused at the time of commission of alleged crime were having the fire arm without any valid licence. In the instant case, the alleged weapon used was having licence in the name of petitioner No.2 and thus, apparently, no case is made out under Section 25 of the Arms Act.

11. In case, it is assumed that licence holder of revolver namely petitioner No.2 kept his licenced weapon in the custody of petitioner No.1, who tried to handle the same, which resulted into firing of accidental shot, injuring petitioner No.1, then also *prima facie* no offence under Section 30 of Arms Act is made out against the accused, as apparently, there was no breach of condition of the arms licence which was issued in favour of petitioner No.2. There is nothing to indicate that petitioner No.2 had either deliberately or impliedly allowed petitioner No.1 to handle the loaded revolver. In this context, reference is made to judgment of Allahabad High Court in Criminal Revision No.602 of 1989 titled as ***Kanhaiya Lal son of Gaya Prasad and others Vs. State of U.P.***, decided on 19.01.1994, wherein accused a police constable kept loaded gun inside his house at night and a child of 12 years taking out the said gun by himself, which went of accidentally killing one child and injuring two other persons, resulted into conviction of the accused persons including the arms licence holder who was convicted under Section 30 of the Arms Act. The appeal filed by licence holder was also dismissed. However, the revision filed by him was allowed and he was acquitted of offence punishable under Section 30 of the Arms Act.

12 Further for want of criminal intent, the offences as alleged by the prosecution cannot be said to have been made out against the petitioners. So, the continuation of the proceedings against the petitioners, on the basis of FIR Annexure P-1 will amount to abuse of process of the Court.

13. The High Court is empowered under Section 482 Cr.P.C to quash an FIR even after chargesheet is filed, if the Court is satisfied that

continuing the proceeding would be an abuse of the process of law. In this context, reference is made to the decision of Hon’ble Supreme Court in *Anand Kumar Mohatta Vs. State (Government of NCT of Delhi), Home Department (2019) 11 SCC 706*.

14. In light of the above, the present petition is allowed and FIR No.130 dated 05.05.2021 Annexure P-1, registered under Sections 25, 27 and 30 of Arms Act and Section 309 of IPC, registered at Police Station Sector-6, Bahadurgarh, District Jhajjar and all the subsequent proceedings arising thereof including the final report submitted by the police are hereby quashed qua both the petitioners.

12.11.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No