



CRR-1438-2011

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

01

CRR-1438-2011

Reserved on: 14.11.2025

Pronounced on : 01.12.2025

KULDEEP @ PINKU

.....PETITIONER

Versus

STATE OF HARYANA

..... RESPONDENT

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Varinder Singh Rana, Advocate/Amicus Curiae
for the petitioner.

Ms. Deepali Verma, Asstt. A.G. Haryana.

SURYA PARTAP SINGH, J.

1. Challenge in this Revision Petition is to the judgment dated 18.05.2011 passed by learned Additional Sessions Judge Sonipat, hereinafter being referred to as 'Appellate Court' only. By virtue of above-mentioned judgment, the learned Appellate Court dismissed the appeal filed against the judgment of conviction dated 01.12.2010 and order of sentence dated 02.12.2010, passed by learned Chief Judicial Magistrate Sonipat, hereinafter being referred to as 'trial Court'.

2. By virtue of above-mentioned judgment, the petitioner, who was facing a trial for the commission of offence punishable under Section-25 of Arms Act has been held guilty for the commission of above-mentioned offence, and the learned trial Court awarded following sentence to the petitioner:-



Offence(s) under Section	Imprisonment	Fine	In default of payment of fine
25 of Arms Act	RI for 01 year	Rs.200/-	SI for 15 days

3. According to learned counsel for the petitioner, the impugned judgments, passed by the learned trial Court as well as learned Appellate Court are outcome of conjectures and surmises and therefore, both of them deserve to be set aside.

4. The pith and substance of the story put up before the learned trial Court is that the FIR No.81 dated 24.06.2004 was lodged in Police Station Rai, District Sonipat. The above-mentioned FIR was lodged on the report of ASI Rajiv Kumar, who had reported that on 26.04.2004 when he was leading a team of police officials for usual law and order duty, he spotted a boy coming from village Sevli side, who sensed the presence of police party on his way ahead got panicked and suddenly turned back with a motive to sneak away. It was further reported by the above-named police officer that on enquiry, the above-mentioned person was apprehended, who disclosed his name as Kuldeep @ Pinku and when the search of his person was conducted, it was found that he was carrying a pistol, kept below the belt of his trouser.

5. It is the case of the prosecution that in view of above-mentioned recovery of weapon, without permit or licence, the requisite formalities with regard to seizure and sealing of recovered weapon, filing of FIR and arrest of accused were performed and further investigation taken up. Pursuant to above-mentioned investigation when Final Report under Section 173 Cr.P.C. was filed, it led to conviction of the petitioner.

6. Heard.



7. It has been contended by learned counsel for the petitioner that the judgment passed by both the Courts below are outcome of non-application of judicial mind and that without looking into the fact that the prosecution had miserably failed to discharge its burden with regard to proving of charge, the learned trial Court vis-a-vis Appellate Court believed the unreliable evidence of the prosecution and returned the finding of conviction of the petitioner. According to learned counsel for the petitioner not only the settled principles of law that prosecution is supposed to prove its case beyond the shadow of doubt, have been ignored by the learned trial Court, vis-a-vis by the learned Appellate Court, but also the fact that requisite formalities were not performed in accordance with law. According to learned counsel for the petitioner neither the sanction for the prosecution of petitioner was properly proved nor the recovery of the same from the possession of the petitioner. It has also been contended by learned counsel for the petitioner that the link evidence was also missing but on the basis of assumptions and presumptions, the petitioner has been convicted.

8. *Per contra*, the learned State counsel has contended that there is concurrent findings of two Courts with regard to proving of charge against the petitioner. As per learned State counsel, the evidence adduced by the prosecution is not only thoroughly consistent but also sufficient to inspire confidence, and that is why both the Courts below have believed the same. According to learned State counsel the scope of interference in the Revision Petition is very limited and that in the present case such scope is not available. As per learned State counsel the present petition is devoid of merits. The learned State counsel has urged for dismissal of present petition.



9. The record has been perused carefully.

10. A perusal of record shows that in the present case four witnesses were examined by the prosecution. Amongst them PW-1 Reader of District Magistrate, Sonipat had proved the sanction order, for the prosecution of petitioner under Arms Act. But according to PW-1 the weapon was not produced before him.

11. With regard to above-mentioned sanction order, it is relevant to mention here that in the sanction order Ex.PA it was not mentioned that the weapon was ever produced before him for examination. Thus, it is apparent on record that the sanction order Ex.PA was passed by the District Magistrate in a routine manner without examination of weapon for which the petitioner had been prosecuted. The above-mentioned lapse on the part of sanctioning authority makes it abundantly clear that the sanction order had been passed in a routine manner i.e. without application of mind, and thus, the above-mentioned sanction order was no sanction order in the eyes of law.

12. In the present case the another significant fact to be taken into consideration is the failure of Investigating Officer to join independent persons at the time of recovery of country-made pistol from the possession of petitioner. With regard to above two witnesses were examined by the prosecution. The PW-2 Sub Inspector 'Rajiv Kumar', the Investigating Officer of the case had deposed that the recovery of weapon was effected at a place where number of public witnesses were present but none of them was joined in the investigation. The same fact was deposed by PW-4 ASI Suresh Kumar. The another significant fact to be taken into consideration is that even the testimony of official witnesses was contradictory with regard to the place of recovery of



country-made pistol. As per PW-2 it was being carried by the petitioner on his left side but as per PW-4 on right side.

13. The another significant fact to be taken into consideration is that at the time of examination of Investigating Officer, the weapon was not produced before the Court. This was a serious lapse on the part of prosecution.

14. It is also relevant to mention here that the link evidence in this case was missing. It was not deposed by PW-5 that from the storeroom of Police Station, he had collected the weapon and produced it before the arms expert for testimony. But the PW-5 deposed that the weapon was produced before him by PW-2. This was a major contradiction in the story set-out by the prosecution.

15. One more lapse on the part of prosecution was that as per PW-5 when the weapon was produced before him, it was not in sealed condition and moreover, as per PW-5 he had not test-fired the pistol in question. In the present case two witnesses of recovery were examined by the prosecution i.e. PW-2 and PW-4 and their testimonies were contradictory qua the timing when police party returned to the police station. Such as, as per PW-2 they returned to the police station at 11:00 P.M. but as per PW-4 at about 10-10:15 P.M.

16. With regard to above-mentioned factual matrix of the case, the observations made by this Court in the case of ***Bhuptej Pal Singh Vs. State of Punjab 2014(1) RCR(Criminal) 24*** are relevant. It has been observed in the above-mentioned case that if the revolver was not sealed on the spot, the accused was entitled for the benefit of doubt.

17. Similarly in the case of ***Gurcharan Singh @ Charana Vs. State of Punjab CRR 535 of 2007*** this Court observed that if the weapon was not



test fired and proven to be in working condition, the charge under Section 25 of Arms Act could not have been established.

18. If the factual matrix of the present case is analysed in the light of above-mentioned principles of law it transpires that;-

- i) that the weapon of offence was never test fired. Thus, the report of Arms Act Expert (PW-5) could not have been believed with regard to the fact that the weapon was in working condition;
- ii) that the sanction order was defective as the weapon was never produced before the sanctioning authority;
- iii) that the link evidence was missing as the storekeeper in whose custody the weapon was kept had not been examined;
- iv) that the weapon was not produced in sealed condition before the arms expert, which shows that it was not sealed on the spot. Thus, the tampering of case property in this case cannot be ruled out;
- v) that despite the fact that recovery had taken place at a crowded place, any independent witness has not been joined;
- vi) that the testimony of witnesses of recovery i.e. PW-2 and PW-4 were contrary with regard to material witnesses;

19. If the cumulative effect of all the above mentioned factors is taken into consideration, it leads to a conclusion that the story set-out by the



prosecution, with regard to recovery of country-made pistol from the possession of petitioner, fails to inspire confidence. Thus it is hereby held that the learned trial Court vis-a-vis learned Appellate Court fell into error of judgment, when they ignored the above-mentioned material and relevant points with regard to proof of charge of Arms Act. Thus, it is hereby held that there is sufficient scope for indulgence and interference in the findings returned by the learned trial Court.

20. As a sequel to above-mentioned observations in the exercise of revisional jurisdiction the impugned judgment passed by the learned trial Court, vis-a-vis learned Appellate Court, are hereby set aside and it is hereby held that the charge for the commission of offence punishable under Section 25 of Arms Act was not proved against the petitioner. The present petition stands allowed accordingly and as a consequence thereof the petitioner is hereby acquitted. His bonds for appearance in the Court shall stand discharge.

21. Ordered accordingly.

(SURYA PARTAP SINGH)
JUDGE

01.12.2025

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No