2026:BHC-AUG:52957



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO.274 OF 2016**

Nana s/o Jalindar Jagtap
Age: 22 years, Occu.: Labourer,
R/o. Ganganagar, Marathi School,
Newasa, Tq. Newasa, Dist. Ahmednagar .. **Appellant**

**Versus**

The State of Maharashtra
Through Police Inspector,
Police Station Newasa, Tq. Newasa,
District Ahmednagar. .. **Respondent**

...

Mr. Sandeep R. Sapkal, Advocate for the appellant.
Mr. V. V. Jahagirdar, APP for the respondent/State.

...

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 29.10.2026
Pronounced on : 30.10.2026

**JUDGMENT :-**

1. Appellant, a convict, challenges the judgment and order of conviction dated 30.03.2016 passed by the learned Additional Sessions Judge, Newasa, in Sessions Case No. 10 of 2015, thereby convicting him of the offence punishable under Section 3 read with Section 25 of the Arms Act.

## BRIEF FACTS OF THE PROSECUTION CASE

2. In trial Court, case of prosecution was that PW3, posted in local crime branch, received secret information that a person travelling on motorcycle bearing No.MH-17-V-3032 is about to come in the vicinity of Newas Bus Stand and he is in possession of country made pistol, which is without permit or licence and, therefore, on complaint of PW1, associate of PW3, complaint was lodged, panchas were arranged and trap was laid in the vicinity of Newasa Bus Stand and around 3.00 a.m., accused Nana arrived there and he was caught, inquired and searched and during his body search, a pistol was recovered from his pant along with two live cartridges. Accused did not possess permit or licence and, therefore, above-said articles were seized by drawing panchanama. Accused was taken in custody and investigation was carried out, which showed that this accused had purchased the arms from accused, namely, Sunil and Nitin and therefore, they were also arrested and on completion of investigation, all three accused were charge-sheeted and tried vide above Sessions Case and on trial, all accused came to be convicted for above offence. Said judgment of conviction is now subject matter of appeal.

**SUBMISSIONS**

**On behalf of appellant/accused No.1 :**

3. Learned Counsel for applicant would submit that prosecution has miserably failed to prove the charges. He would submit that though it was claimed that secret information was received, there was no noting to that extent in any police record or station diary and therefore, the credibility of the information itself had come under doubt. He further pointed out that though accused Nana was caught in the vicinity of bus stand and seizure of weapon was effected in presence of panchas, the panch has not supported prosecution. The second panch to the panchanama was not at all examined by prosecution. Thus, he further submits that except police witnesses there is no independent corroboration to the prosecution story. He also pointed out that chain of custody of muddemal is not proved to be beyond reasonable doubt and, as such, he questions the integrity of seizure evidence by submitting that carrier is not examined and moreover, dispatch to the analyzer is after inordinate delay, thereby raising considerable doubt about the seizure, its examination and the ballistic report. He would further submit that there is possibility of planting. Lastly, he submitted that the case of prosecution to such extent has not been appreciated by the learned trial Court and

therefore, he urges to allow the appeal by setting aside the impugned judgment.

**On behalf of respondent/State :-**

4. Per contra, learned APP, while justifying the judgment and order of conviction, would submit that acting on secret information, raid was planned and it was successful. That, as per information, accused arrived in the vicinity of Newasa Bus Stand and was rightly apprehended. During his body search, a country made pistol with two live cartridges were seized by drawing panchanama in presence of panch witness. The seizure was sent for opinion of ballistic expert, which is positive. That, it was found to be a country made arm and there was admittedly no licence or permit to possess the said arm. He pointed out that Investigating Officer had taken steps of approaching District Magistrate for seeking sanction to prosecute and only on receipt of the same, prosecution was launched. There was credible and consistent evidence of police witnesses. Learned APP further pointed out that though panch to seizure did not support prosecution, it is his submission that the manner and tenor of cross-examination by the defence itself shows that there is no serious challenge or dispute to the seizure. According to him, the cross-examination itself shows that the case of prosecution is accepted in Toto. Taking this Court

through the reasons and findings assigned by the learned trial Court, he would submit that learned trial Court has dealt with each and every aspect of the matter and has applied settled law and as such, the impugned judgment is perfectly legal and valid and needs no interference.

## EVIDENCE BEFORE THE TRIAL COURT AND ANALYSIS

5. Re-appreciated the evidence. Record shows that, initially, charge was framed against accused No.1 Nana s/o Jalindar Jagtap and accused No.2 Sonya alias Sunil Mohan Pardeshi vide Exhibit-10 and subsequently, charge was framed against accused No.3 Nitin Manik Mirpagar vide Exhibit-16. On minute scrutiny of charge, it is revealed that possession of arm is attributed to accused No.1 and allegations against accused Nos.2 and 3 are that they handed over the arm to accused No.1, which was without licence or permit.

6. **PW1** seems to be the informant, who was a Police Naik and it has come in his evidence at Exhibit-18 that, on that day, while he was in company of API, PW3, in search of an absconding accused, at that time, PW3 received information, that a person was wandering suspiciously in the area of Newasa Bus Stand on a motorcycle bearing No.MH-17-V-3032. Trap was accordingly led and around 3.00 a.m.,

the person whose description and information was received arrived there, who was caught, inquired and he gave his name as Nana. He identified accused in the Court and further deposed that his body search was taken in presence of panchas and he was found to be in possession of country made pistol and in the magazine therein, there were two live cartridges. Inquiry revealed that he did not possess permit or licence to occupy and possess the pistol. Therefore, after drawing panchnama, accused was taken to police station and on behalf of State, he lodged complaint Exhibit-20.

. While under **cross-examination**, he answered that PW3 had received information personally and he does not know exactly how said information was received. He answered that there was entry taken in the log book of the vehicle used for patrolling. He admitted that station diary is not maintained by Local Crime Branch. He admitted that Newasa Police was not informed well in advance about proposed action. In paragraph No.7 of cross-examination, suggestion is given, which is admitted, that in Crime No.222 of 2013, brother of Nana was also arrested by LCB. Rest is all denial.

7. **PW2,** panch to seizure, did not support prosecution and was required to be cross-examined by learned APP, but nothing fruitful could be solicited therefrom.

8. **PW3** is the Investigating Officer, who received the secret information. In his evidence at Exhibit-22, he deposed to that effect. He further stated that he, along with the police staff and panch witnesses, proceeded to the vicinity of the bus stand. At around 3:00 a.m., a person matching the description received through the secret information arrived there. He was questioned and searched, whereupon a country-made pistol containing two live cartridges was found in his possession. The arm as well as motorcycle were seized. He further deposed that complaint was registered by PW1 and thereafter, the investigation which he undertook revealed that the arm in possession of accused No.1 was received by him from accused Nos.2 and 3. He deposed about dispatching the arms to ballistic expert for opinion and the report being received and it to be a part of charge-sheet, which he identified at Exhibit-24. He identified all communications to superiors.

. While under **cross-examination**, he answered that they were searching for an absconding accused on 25.09.2013. He answered that he does not remember whether on that day brother of Nana was arrested or not. In paragraph No.6, he admitted the geographical location of the bus stand and its vicinity. The remaining suggestions were denied.

9. Apart from above oral account, prosecution in the trial Court seems to be heavily relying upon Ballistic Expert report Exhibit-24.

10. On analyzing above evidence, firstly, it is noticed that prosecution claims receipt of secret information, but complainant himself has admitted that except entry in the log book, there was no corresponding entry in the station diary. It is fairly settled position that whenever secret information was received, then though name of the informant is required to be kept secret, receipt of secret information is indeed required to be noted in the station diary. Here, thus, there is no written document about receipt of secret information. Another feature which is emerging on evidence of PW1 and PW3 is that, PW1 merely received secret information that a person was wandering on motorcycle suspiciously. Though PW1 was in the company of PW3, he has not deposed about the nature of information regarding a person carrying an illegal firearm, as stated by PW3.

11. PW1 and PW3 both are deposing about laying trap in the vicinity of bus stand and accused No.1 being apprehended, personal search being conducted and he to be found in possession of country made pistol with two live cartridges and they both are also stating

about seizure of the same by drawing panchanama and taking the muddemal to police station on the same day i.e. on 25.09.2013. Unfortunately, the independent panch, in whose presence, seizure was effected has not supported prosecution. If one of the panch is not supported, it was expected of prosecution to examine the second panch, but no efforts seem to have been taken. Thus, as regards to seizure of weapon is concerned, there is only evidence of PW1 and PW3, who are part of the same police team that night.

12. Indeed, steps were taken to send the seizure i.e. pistol and cartridge to ballistic expert, but it is pertinent to note that though seizure was done on 25.09.2013, surprisingly, the dispatch to the analyzer is of 04.12.2013 i.e. almost after more than two and half months. In cases of such nature, it was expected of prosecution to maintain the integrity of seizure by demonstrating that the seized muddemal was in proper custody till it was dispatched to the analyzer. Here, unfortunately, carrier has not been examined.

13. Learned Counsel for the appellant has rightly raised doubts about the integrity of the seizure, as the chain of custody has not been established beyond reasonable doubt. There was an inordinate delay in dispatching the seized articles, and the prosecution has failed to

establish that the seized articles remained intact, thereby ruling out the possibility of planting or tampering. Consequently, the prosecution case is rendered doubtful.

14. To sum up, firstly, there is no independent corroborative evidence. Secondly, PW1 and PW3 are not consistent regarding the nature of the secret information received. The secret information, as required, has also not been recorded in the station diary. Above all, the chain of custody of muddemal property has not been established beyond reasonable doubt, thereby creating a doubt regarding its integrity. Thus, the appellant succeeds.

## CONCLUSION

15. Perused the judgment under challenge. The learned trial Court has, as pointed out, straightaway accepted the prosecution case without noticing the aforesaid shortcomings. Therefore, interference by this Court is called for. Hence, the following order is passed :-

## O R D E R

I. The Criminal Appeal is allowed.

II. The conviction awarded to the appellant - Nana s/o Jalindar Jagtap by learned Additional Sessions Judge, Newasa in Sessions Case No.10 of 2015 vide judgment and order dated

30.03.2016 for offence under Sections 3 read with Section 25 of the Arms Act, stands quashed and set aside.

III. The appellant - Nana s/o Jalindar Jagtap stands acquitted of the offence punishable under Sections 3 read with Section 25 of the Arms Act.

IV. The bail bonds of the appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

scm