

(1999) 09 OHC CK 0025

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1024 of 1998

Ajaya Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Arms Act, 1959 — Section 10, 11, 12, 19, 21(1)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 326

Citation : (1999) 88 CLT 553 : (2000) CriLJ 785 : (1999) 17 OCR 423

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : D. Panda, M. Chand, G.R. Mohanty and D.C. Swain, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—In this application u/s 482 of the Criminal Procedure Code, 1973 (in short "the Code") petitioners who are the accused persons in Sessions Trial No. 85/73 of 1997 of the Court of Chief Judicial Magistrate-cum-Assistant Sessions Judge, Khurda have prayed to quash the order dated 28-2-1997 of the trial Court by which learned Assistant Sessions Judge framed charge against the petitioners for the offence under Sections 25 and 27 of the Arms Act, 1959 and SECTION 326 and 307/149, IPC.

2. It is alleged by the prosecution that on 21-4-93 at about 10 a.m. when the informant Siri Dei and a co-villager Buna Dei were tending cattle in and around the disputed cashew field, petitioners with many other (co-accused persons) came there with firearms and deadly weapons like Pharsa, Katuries and lathies, outraged modesty of the informant and on hearing her shout when her co-villagers came to the spot petitioners and the co-accused persons attacked and assaulted them by using the aforesaid weapons. That report of the informant was registered as Jankia P. S. Case No. 87/93 and C. K. Case No. 364 of 1993 in the

Court of S.D.J.M. Khurda. After completion of investigation, charge-sheet for the offence u/s 147/148/354/326/307/149 Indian Penal Code and under Sections 25 and 27 of the Arms Act was submitted. Learned S.D.J.M. took cognizance of the said offences and as and when the accused persons were apprehended, they were committed to the Court of Sessions for trial. The above named petitioners were committed to the Court of Sessions to face their trial vide order dated 27-1-1997 of the Court of S.D.J.M. After commitment, on 28-2-97 learned Assistant Sessions Judge perused the records, passed the impugned order and accordingly framed charge against the petitioners for the offences in the manner already narrated.

3. Learned counsel for the petitioners contended that taking cognizance of the offence and framing of the charge for the offences under Sections 25 and 27 of the Arms Act, is bad in law inasmuch as sanction as required u/s 39 of Arms Act was not obtained at any stage till submission of charge-sheet. He further argued that in the absence of any grievous injury framing of charge for the offence u/s 326, IPC is unwarranted and when there is no evidence in record to prima facie satisfy that there was an intention to kill, framing of charge for the offence u/s 307, IPC is equally fallacious.

4. Learned Additional Standing Counsel while admitting that no sanction u/s 39 of the Act has been obtained, argued that such a question can be raised at the time of trial i.e., at the time of hearing of argument and merit of that contention can be considered properly by the trial Court. He, however, argued with reference to material in the case diary that prima facie evidence is available to sustain the charge for the offence u/s 326 and 307, IPC. Accordingly, he argued to reject the application u/s 482 of the Code.

5. Before dealing with the arguments advanced in respect of sanction as required u/s 39 of the Arms Act, it is proper to refer to the language used in the statute in Section 3, 5, 25, 27 and 39 of the Arms Act, 1959. The same are quoted as hereunder :-

3. Licence for acquisition and possession of fire-arms and ammunition -

(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder :

Provided that a person may, without himself holding a licence, carry, any fire-arm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in Sub-section (1) no person, other than a person referred to In Sub-section (3), shall acquire, have In his possession or carry, at any time, more than three fire-arms :

Provided that a person who has in his possession more fire-arms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him

any three of such fire-arms and shall deposit, within ninety days from such commencement the remaining fire-arms with the officer-in-charge of the nearest police station or, subject to the conditions prescribed for the purpose of Sub-section (1) of Section 21, with a licensed dealer or, where such person is member of the armed forces of the union, in a unit armoury referred to in that subsection.

(3) Nothing contained in Sub-section (2) shall apply to any dealer in fire-arms or to any member of rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of Sub-sections (2) to (6) (both inclusive) of Section 21 shall apply in relation to any deposit of fire-arms under the proviso to Sub-section (2) as they apply in relation to the deposit of any arm or ammunition under Sub-section (1) of that section.

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5. Licence for manufacture, sale etc. of arms and ammunition -

(1) No person shall -

(a) use, manufacture, sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any fire-arm or any other arms, of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a licence issued in accordance with the provision of this Act and the rules made thereunder :

(2) Notwithstanding anything contained in Sub-section (1), a person may without holding a licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition :

Provided that no fire-arm or ammunition in respect of which a licence is required u/s 3 and no arms in respect of which a licence is required u/s 4 shall be sold or transferred by any person unless -

(a) he has informed in writing the District Magistrate having jurisdiction or the officer-in-charge of the nearest police station of his intention to sell or transfer such fire-arms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such fire-arms, ammunition or the other arms, and

(b) a period of not less than forty-five days has expired after the giving of such information.

25. Punishment for certain offences -

(1) Whoever -

(a) manufactures, sells, transfers, converts, repairs, tests or proves or exposes or offers for the sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5, or

(b) shortens the barrel of a fire-arm or converts an imitation fire-arm into a firearm in contravention of Section 6, or

(c) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of Section 11, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(1-A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

(1-AA) Whoever manufactures, sells, transfers converts, repairs, tests or proves or exposes or offers for sale or transfer or has in his possession for sale, transfer conversion repair, test or proof, any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(1 -AAA) Whoever has in contravention of a notification issued u/s 24A in hi possession or In contravention of a notification issued, u/s 24B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

(1-B) Whoever -

(a) acquires, has in his possession or carries any fire-arm or ammunition in contravention of Section 3; or

(b) acquires, has in his possession or carries any place specified by notification u/ s 4 any arms of such class or description as had been specified in that notification in contravention of that section; or

(c) sells, or transfers any fire-arm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by Sub-section (2) of Section 8 or does any act in contravention of Sub-section. (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause fill) of clouse. (a) of Sub-section (1) of Section 9 applies, acquires, has in his possession or carries any fire-arm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any fire-arm or ammunition in contravention of Clouse. (b) of Sub-section (1) of Section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of SECTION 10; or

(g) transports any arms or ammunition in contravention of Section 12; or

(h) fails to deposit arms or ammunition as required by Sub-section (2) of Section 3, or Sub-section. (1) of Section 21; or

(i) being a manufacturer of, or dealer in, arms or ammunition fails, on being required to do so by rules made u/s 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries there from or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or cancels such arms or ammunition or refuses to point out where the same are or is manufactured or kept, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine;

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

(1 -C) Notwithstanding anything contained in Sub-section. (1-B), whoever commits an offence punishable under that sub -section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation - For the purpose of this sub-section "disturbed area" means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression or disorder any restoration and maintenance of public order and includes any area as specified by notification u/s 24A or Section 24B.

(2) Whoever being a person to whom sub-clause (i) of clouse. (a) of sub-see. (1) of Section 9 applies, acquires, has in possession or carries any fire-arm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(3) Whoever sells or transfers any firearms, ammunition or other-arms -

(i) without informing the District Magistrate having jurisdiction or the officer-in charge of the nearest police-station, of the intended sale or transfer of that fire-arm, ammunition or other arms, or

(ii) before the expiration of the period of forty-five days from the date of giving

such information to such District Magistrate or the officer in-charge of the police station.

In contravention of the provisions of clause. (a) or clause. (b) of the proviso to Sub-section (2) of Section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(4) Whoever fails to deliver up a licence when so required by the licensing authority under Sub-section. (1) of Section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under Sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine or an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required u/s 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months or with fine of an amount which may extend to two hundred rupees or with both.

27. Punishment of using arms, etc.

(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act result in the death of any other person, shall be punishable with death.

39. Previous sanction of the District Magistrate necessary in certain cases - No prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate.

6. According to Section 3, no person shall acquire or in his possession or carry any firearm or ammunition without a direct licence issued in his favour in accordance with law or in favour of the person in whose directions or authorisation, he acquires, possesses or carries any such fire-arm or ammunition. A contravention of the provision in Section 3 of the Arms Act has been made punishable under Sub-Section 1(B) and 1(C) of Section 45 of the Arms Act, 1959. Section 39 mandates for obtaining of sanction of the District Magistrate for prosecution of an offence made out under Section 3 of the Arms

Act. In other words, Section 39 does not prescribe for obtaining of sanction for any other offence, other than the offence u/s 3 which is punishable under certain penal provisions as provided in Chapter V of the Arms Act. Therefore, merit of the contention of the petitioner has to be considered from the language used in the charge while framing charge against them by the trial Court. In that context, the charge reads as hereunder :-

(1) Name and (I) Shri D K. Ray, office of Magis LL.B., Asst. Ses- trate, etc. sions Judge, Khurda (2) Name of hereby (2) 1. Ajaya Moha- accused chergency. person you 2. Akhaya Moh- anty. as follows :-- First-That you, on or about the 21 st day of April, 1993 at 10 a.m. at cashew field of Dhoba Nanasingh near village Delipatna, were in possession of guns in contravention of Section 5 of the Act and thereby committed an offence punishable u/s 25 of the Arms Act and within (3) my cognizance. Secondly - That you on or about the same day, time and place, fired guns and caused injuries on Sriri Dei, Buna Dei, Raja Parida, Brajabandhu Naik, Banshi Jena, Bobinda Jena, Ulla Dei and Rama Dei in contravention of Section 5 of the said Act; and thereby committed an offence punishable u/s 27 of the Arms Act and within (3) my cognizance.

7. It is apparent on the face of the record that charge u/s 25 of the Arms Act or u/s 27 of the Arms Act has not been framed against the petitioners for contravention of the provisions in Section 3 of the Arms Act. Hence sanction as required u/s 39 of the Arms Act, in the present case is not required for prosecuting the petitioners 1 and 2. Accordingly that contention of the petitioners is rejected.

8. So far as charge for the offence u/s 326 and 307, IPC are concerned, on a bare perusal of the statement available in the case diary a prima facie case to that effect constituting the said offences are made out. Time and again, it has been reiterated by this Court as well as the Apex Court that at the stage of framing of charge, trial Court is not required to go into the merit of the case and to scan the evidence to find out if the evidence is sufficient to convict a person. On the other hand at the stage of framing of charge, it is the duty of the trial Court to find out if prima facie materials are available constituting the ingredient of the offence for which charge-sheet has been filed or for which accused has been committed to the Court of Sessions or for which the charge is proposed to be framed. See the case of *Indrajit Ray v. Republic of India*, reported in (1998) II OLR 424. Hence no fault is found in the impugned order for framing charge u/s 326 and 307, IPC.

9. In view of the aforesaid findings as recorded above, contentions raised on behalf of the petitioners having failed the Criminal Misc. case is dismissed. Trial of the case, which has already commenced and a few witnesses have already been examined, be taken up and the trial be completed expeditiously. Registry is directed to send back the LCR to the lower Court immediately and preferably within seven days hence.