
(2014) 07 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : Cr. Revision No. 4126 of 2013

Balwinder Singh

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Arms Act, 1959 — Section 13, 25, 25(1A), 3, 30

Citation : (2014) 07 SHI CK 0120

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : B.C. Negi, Advocate for the Appellant; R.S. Verma, Additional Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—The moot question which arises for consideration in the present petition, is as to whether the present petitioner, who was found carrying a prohibited firearm, within the territorial jurisdiction of State of Himachal Pradesh, without any authority/licence/permission, has infringed the provisions of Section 3 of the Arms Act, 1959 (hereinafter referred to as the Act) and as such can be prosecuted and punished for having committed an offence under the provisions of Section 25 of the said Act.

2. It is not in dispute that petitioner owns and possesses firearm i.e. revolver (Marka 32 Bore MK-1SAF KANPUR 2003 No. 3990). It also cannot be disputed that F.I.R. No. 48/2011 dated 19.4.2011 was registered against the present petitioner for illegally possessing the said firearm alongwith 6 bullets on 19.4.2011. The said F.I.R. was registered at Police Station, Shahpur, District Kangra, H.P. under the provisions of Section 25 of the Act. It also cannot be disputed that with the completion of investigation, Challan was presented in the Court for trial which prima facie reveal complicity of the accused in the alleged crime, in relation to which accused stands charged for having committed an offence punishable under the provisions of Section 25 of the said Act vide

impugned order dated 6.7.2013 passed by Chief Judicial Magistrate, Kangra at Dharamshala, H.P.

3. Challenge to the order framing charge is on the following grounds:-

(i) Petitioner possesses firearm licence (Annexure P-4) validly issued by the competent authority(s) and any infraction of terms of the licence or the Rules framed under the Act would only entail action, penal in nature, if any, under the provisions of Section 30 and not Section 25 of the Act.

(ii) No permission for transportation/carrying a firearm in territory other than the one for which licence stands issued is required to be obtained by an owner of a firearm. Rule 37(e)(i) (2nd proviso) is evidently clear to this effect.

4. That the weapon of the petitioner falls in Schedule I and mandatorily requires licence holders to acquire and possess a licence cannot be disputed. In the instant facts and circumstances, the licencing authority having jurisdiction and authority with respect to the area i.e. territorial jurisdiction has issued licence with respect to the State of Delhi, U.P., Punjab and Rajasthan. With respect to the State of Himachal Pradesh, no licence stands issued by the competent authority having jurisdiction to do so.

5. Language of Section 3 of the Act is ambiguously clear. Sub Section (i) of this Section mandates that no person shall acquire/possess/carry any firearm unless he holds a licence issued in accordance with the provisions of the Act and Rules made thereafter. Section 7 of the Act also prohibits any person from acquiring, having in his possession or carrying any prohibited arm without any specific authority of the Central Government. Violation of provisions of Sections 3 and 7 of the Act entails prosecution and imposition of punishment u/s 25(1A) and (1B) of the Act.

6. Rule 51 envisages an application to be submitted in Form-A, by the applicant for grant of licence. The application is to be processed by an authority, Officer/ District Magistrate of the area. Rule 4 prescribes issuance of licence under Chapter II of the Act by such authorities, in such Forms, to be valid for such period and in such areas as are specified in Schedule II of the Rules.

7. Rule 53 specifically empowers the licencing authority to extend the area of validity specified in the licence, subject to the condition that the authority has power to grant licence in relation to the area to which such extension is sought.

8. The petitioner does not possess any licence or authority to carry the firearm outside the territorial jurisdiction for which licence stood issued by the District Magistrate so defined under the Act and the Rules. Licence of firearm is a privilege, restricting possession thereof, to certain territorial limits so prescribed therein. Licence is granted u/s 13 of the Act in a prescribed form which specifically provides for "place or area for which the licence is granted".

9. Section 30 of the Act would come into play only and only where for

contravention of conditions of licence or provisions of the Act, no punishment is provided elsewhere.

10. For violation of Section 3, Section 25 clearly provides punishment with imprisonment for a term of not less than one year. Thus, Section 30 is squarely inapplicable in the given facts and circumstances. It operates in a totally different field.

11. Rule 37, in no manner strengthens the petitioner's case. In the instant case, petitioner did not obtain any permit from the licensing authority for transportation. In any event, it is not the petitioner's case that he crossed the territorial jurisdiction of Himachal Pradesh, without any authority/sanction/permit/licence from the premises of the licenced dealer or for the purpose of examination/repair/test to the address of any person lawfully entitled to possess the same.

12. Hence, for all the aforesaid reasons, it cannot be said that petitioner has made out a case for quashing of order dated 6.7.2013 framing charges against him, under the provisions of the Act. Accordingly, the petition is dismissed.

13. However, any observations made herein above shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by the same.