
(1975) 04 BOM CK 0010
In the Bombay High Court

Guljarsing and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-04-1975

Acts Referred:

Arms Act, 1959 — Section 25(a)

Citation : (1976) CriLJ 205 : (1976) MhLj 485

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Judgement

Masodkar, J.—These three revisions can be disposed of by this common judgment.

2. All the three applicants are residents of village Pachori, taluq Burhanpur, district East Nimar, of Madhya Pradesh State. They have been found guilty u/s 3 read with Section 25 (a) of the Arms Act, 1959 hereinafter called the Act, for having been found at village Ambaparwa possessing what is styled by the prosecution as revolver and certain ammunitions.

3. Briefly stated, the facts are that P.S.I. Panjabrao was attached to Khangaon Police Station. He had found Tarasing and Baryamsing having in possession of some hand-made pistols in October, 1971 and pursuant to the information he proceeded to village Ambaparwa which is on the border of the two States, Maharashtra and Madhya Pradesh. He was accompanied by Sambhaji and Samad, two police constables. Having got down at the Dak-Bungalow at Ambaparwa, it is the case of the prosecution that constable Sambhaji and Samad were sent to the village of the accused in Madhya Pradesh by crossing the border and they were asked to get the accused at Ambaparwa on the pretext that there were prospective purchasers for their pistols and ammunitions. A panch from village Bawanbir by name Sukhdeo was also kept ready to witness the incident. According to the prosecution thus Panjabrao laid a trap and eventually on the say of Sambhaji, it is stated that these accused-applicants came to Ambaparwa and they were possessed of the articles like country made pistols and certain

cartridges. Seizures were effected which are filed in the respective cases started against these three accused. Eventually after the seizures, F. I. R. was lodged and these accused along with 3 others were put up for trial for offences under Sections 3 and 5 read with Section 25 (a) and (c) respectively of the said Act. The present applicants have only been convicted for possessing the so-called pistols and ammunitions at village Ambaparwa when they were apprehended by P.S.I. Punjabrao, u/s 3 read with Section 25 (a) of the Act. That conviction is under challenge.

4. The first question is whether prosecution has led satisfactory evidence to show that the articles seized in all these three cases by P.S.I. Punjabrao do answer the definition of the term "ammunition" u/s 2 (1) (b) as well the definition of "arms" contained in Section 2 (1) (c). Evidence on this point is only that of Punjabrao. For the reasons best known the prosecution have not got these arms tested nor the so-called ammunition certified from any Ballistic Expert. Before the Courts below too, this question was raised but the same has been answered relying upon the testimony of Punjabrao.

4A. The accused have denied not only the seizure but also the allegations that these articles were either "arms" or "ammunition". The seizure which is identical in these cases and panchnama effected may be briefly noted which merely described what was the articles and the manner stating that it was a hand-made pistol having a tubular like projection, a trigger and a hand-rest. It does not describe whether the same was in a working condition or even whether the trigger was capable of ejecting any ammunition from the projection described as a small projecting iron tube. In panchnama the article is described as pistol and the ammunition as kadtoos. These facts are all challenged and questioned.

5. Evidence of Punjabrao is to the effect which is pressed by the prosecution for acceptance that he being a police officer, he states that pistol can be used for fixing ammunition. Except the statement, he does not refer to the articles seized specifically in the case against Guljarsing. In the case against applicant Fulsing, he states that the cartridge is alive and the material seized is used for manufacturing pistols, the pistol can be used as a fire-arm. As to the panchnama and the seizure, the description is in similar terms. It was put to him that material seized by him was usable in the trade of blacksmith, the knowledge of which he denies, it does not appear from his evidence in any case that he had tested this fire-arm in any manner or had any other experiment carried out. Even in the case of Prenisingh, the position is not different. His evidence is merely that only because he is serving for 22 years, he states that pistol can be used as a fire-arm.

6. Thus the evidence of Punjabrao is of general character and is at the most based on visual impressions got by him by these articles. He had not tested the articles nor the ammunitions and, as stated earlier, the prosecution for the reasons not known has not tendered any other expert opinion.

7. The importance in a criminal trial of such material to be placed by the prosecution on record cannot but be emphasised because of the definition available in Section 2 (1) (b) of the term "ammunition" and of the term "arms" in Section 2 (1) (c). In the term of "ammunition" which must be the ammunition for the purpose of firearms several items are included which show the range right from rocketry to small balls usable as ammunition which can be ejected and exploded effectively through the mechanism of fire-arms. In the inclusive definition even the ingredients of ammunition as the Central Government may by notification in the official gazette specify are treated to be the ammunitions. It is, therefore of essence, if the charge is that the accused was in possession of ammunition, that it must be told to him what type of ammunition he was possessed of and that can only be done if the prosecution is careful enough to ascertain whether the accused was in possession of the ammunition within the meaning of the provisions of the Act and if so what type. Mere visual examination of an article seized from the accused by the police in a given case may be a poor substitute. There may be articles which have a look of an ammunition but may not in fact be an ammunition. It is not for the accused to explain the things which the prosecution wants to rely upon. The general impression of Punjabrao with regard to the so-called ammunition cannot thus be the basis for conviction in a criminal trial unless it is established to the satisfaction of the Court that in fact what was seized from the accused was the ammunition within the meaning of the Act. This is more so for the term "ammunition", apart from the definition, is indicative as conveying projectiles used with ordnance, rifles and similar weapons, together with the requisite propellants, fuses, cartridges and means of ignition. There are further technical classifications available, such as projectiles, cartridges, the means of ignition and the fuse. It follows therefore that the prosecution cannot be relieved of the onus to establish that the material brought before the Court answers the term "ammunition".

8. Similar is the position with regard to the definition of the term "arms". The definition takes in the articles designed or adapted as weapons for offence or defence. Merely because an article has a trigger or a hand rest and has a look like that of a gun or pistol, that would not be enough to show that it is a weapon which can be used for the offence or defence. The prosecution is bound to establish that the article brought before the Court and seized from the accused in a given case is a weapon in that it is capable of inflicting into serviceable weapons. These terms of the definition having inclusive as well excluding parts will have to be kept in view while trying an accused for possession of "arms". Though an article that looks like a weapon may be seized from the accused, it may still not be the "arm" within the definition of the Act and it will have to be shown by evidence that the thing seized was a weapon within the meaning of the definition, in a given case the very article tendered in evidence may substantiate the requirement and the Court will be in a position by the very tender of that to find so.

9. In a given case if the articles are sharp-edged and deadly weapons, the Court may by mere look at it form its opinion and may conclude that it answers the terms of "arms". But when the case is of a mechanical device and complicated weaponry same said opinion could not be formed. A thing that looks like a gun or pistol must possess, to be an arm, a potentiality of a weapon, for it must be shown that it has capacity to eject the ammunition by its very design. Unless evidence is forthcoming the matter should not be allowed- to rest on mere visual examination. For though an article presents a look of "an arm" it may on test prove an useless gadget or a mere show piece. Advisedly such exclusion has been made part of the definition of the term "arms". Without even doubting the experience of P.S.I. Punjabrao, it is amply clear in the present case that there is no material placed by the prosecution to prove that articles seized are "arms". The evidence of P.S.I. falls too short of the requirement and cannot be treated as sufficient on this aspect.

10. It is fundamental in criminal jurisprudence that none can be convicted on the basis of assumptions, It is undoubted that the offence of possessing such dangerous arms should be frowned upon by all concerned but at the same time every care should be taken to put all possible evidence to enable the court to hold accused guilty

11. That being the position, the accused-applicants are entitled to acquittal.

12. Before parting with the judgment, it may be mentioned that similarly there is some doubt about the authority of P.S.I. Punjabrao to lay such a trap so as to get the persons from the neighboring State into his own territory and to arrest them by exercise of his power u/s 19 of the Act. It is undoubtedly true that a police officer is empowered to demand the production of the license from any person who is found carrying arms or ammunition and upon production to proceed to seize from such person arms and ammunition which he was carrying. Only in case the person refuses to give the name and address or the officer suspects that the person is giving a false name or address or the person is intending to abscond, the officer is enable to arrest him without warrant.

13. The power u/s 19. therefore, indicates that the power is circumscribed by its own inherent limitations, in that if a person is found carrying any arms or ammunition, the police officer can ask for production of license. In any other case, it appears, the power to effect search and seizure has to be exercised in the manner indicated by Sections 22, 23 and 2-1 of the Act. u/s 22 power rests with the Magistrate who has jurisdiction over the local limits wherein the person residing is stated to have in his possession arms and ammunition. Section 23 deals with the power of the Magistrate with regard to search of vessels, vehicles for arms etc. Section 24 enable the Central Government to make orders regarding seizure and detention. The powers u/s 19 have to be exercised, therefore, keeping in view the other powers of the other authorities.

14. Now, admittedly, the accused-applicants were ordinary residents of East

Nimar district of Madhya Pradesh. If they were carrying on activities which could be amenable to Section 22 or Section 24 then only legal procedure was to follow the dictates of those provisions. The police officer of the neighbouring State like Punjabrao would do well in laying down the information before the concerned authorities so that effective steps as indicated by law are taken by the competent authorities. It is doubtful whether such a police officer could send police constables and call upon the persons under a pretext to come and enter the border of the home-State and lay such traps and then by resort to Section 19 effect arrests on the ground that such person was found carrying arms or ammunition.

15. Circumspection is the inbuilt criteria upon which such executive action will be eventually judged. Cautious discretion in matters that involve inter-State relations cannot but be emphasised. While exercising powers under statute enthusiasm should not be permitted to run unguided and that too beyond the borders of the State. Such procedure is fraught with several administrative as well judicial complications involving by passing of the eminent authorities in the neighbouring States who have plenary and legal powers in that regard. Every care will have to be taken in this regard particularly when the States are autonomous within their limits and further the borders that divide them are undoubtedly friendly. Unless there are special reasons and circumstances such procedure cannot be sanctioned. This is particularly clear with regard to the provisions of the Arms Act, because the provisions like Sections 22 to 24 indicate that as far as possible, it would firstly be Magistrate having jurisdiction over the local limits who will have authority to act and the Central Government is only enable u/s 24 upon satisfaction of its conditions to order seizures and detention. As the enactment presently stand, it excludes, therefore, the power of any other authority to take the measures indicated by See Section 22 to 24.

16. Even the so-called trap, as spoken to by P.S.I. Punjabrao and the punch is highly inadequate so as to answer the requirements of Section 19. Firstly, P.S.I. Punjabrao states that he had asked his constable to cross over the other State of Madhya Pradesh, go to village Pachori, approach the accused and ask them to bring the weapons for sale at Ambaparwa. This is not what is contemplated by Section 19. Even after the accused were so coming to the Dak Bungalow near Ambaparwa, the evidence of Punjabrao shows that they were lying in wait for the accused and as soon as the accused appeared they were arrested and then the seizures were effected. To that effect is the evidence of Sambhaji and the panch Sukhdeo.

17. All this has to be appreciated to find out whether the procedure and everything before the Court is in accordance with the provisions of Section 19 of the Act. That provision lays down the power as well as the procedure. As stated earlier, it confers the authority on the police officer to demand the production of the licence from a person who was carrying any arm and ammunition and, secondly, if that person refused or failed to produce the licence or to show that

he was entitled to carry such arm without a licence, the officer is enabled to require him to give his name and address and then effect the seizure of arms or ammunition. Such person can be arrested without warrant only if he refused to give his name and address or that the officer is of the view that such person is giving a false name or address or is intending to abscond. There is, however, no power to effect arrest in any other contingency.

18. This power and this procedure is the totality of the power available under the Act which is being relied upon for the prosecution. Evidence indicates that P.S.I. Punjabrao acted not in conformity but almost by motivation which cannot be raised to the pedestal of the legal power and procedure. It is difficult, therefore, to sanction the procedure followed by P.S.I. Punjabrao in laying down the trap, in getting the accused from the neighbouring State into the home-State in this manner and then, without following the procedure required by Section 19 which must mean that he must give the accused opportunity to produce the licence or to explain that no licence is required, in seizing the articles and further effecting arrest without warrant.

19. May be, the P.S.I. was inspired by bona fide motives so as to go to the root of a dangerous industry which may threaten peace and order. That is however no reason to uphold the conviction of the accused.

20. As stated in the first part of the judgment, the basic question has not been satisfactorily established and that is enough to hold that the prosecution has failed to establish the guilt of the accused u/s 3 read with Section 25 (a) of the Arms Act. As the accused are not claiming the articles seized during the investigation by P.S.I. Punjabrao, the same are liable to be confiscated to the State.

21. In the result, all these three applications are allowed and the accused-applicants are acquitted of the offence with which they were charged. The bail bonds of the accused-applicants would stand cancelled. The articles seized from the accused-applicants shall be confiscated to the State.

22. In view of the observations made in this judgment regarding the propriety of laying such trap, involving the violation of the authority of the neighbouring friendly State, it is directed that copy of this judgment be sent for information to the Home Department of the State of Maharashtra as well the Home Department of the State of Madhya Pradesh for information.