

(2002) 01 OHC CK 0040
In the Orissa High Court
Case No : Criminal Revision No. 169 of 1996

Kamal Kumar Sahu and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Arms Act, 1959 — Section 27, 27(1), 5, 7
Criminal Procedure Code, 1973 (CrPC) — Section 401
Explosives Act, 1884 — Section 9
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (2002) 93 CLT 330 : (2002) CriLJ 2896 : (2002) 1 OLR 319

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : A.K. Nayak, A. Mohanty, B. Patnaik and H.S. Satpathy, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—This revisional application has assailed the validity of the order passed by the learned 2nd Addl. Sessions Judge, Berhampur in Criminal Appeal Nos. 13 and 14 of 1996 and also the order passed by the learned Judicial Magistrate, 1st Class, Berhampur in G. R. Case No. 387 of 1992 u/s 27 of the Arms Act whereby the petitioners were sentenced to undergo R.I. for two years and to pay a fine of Rs. 500/- each, in default to undergo further R.I. for two months.

2. Shorn of unnecessary details, the prosecution story as unravelled during trial of the case is as follows :

That P.W. 4, the I.I.C. of Baidyanathpur Police Station while investigating a case in connection with Baidyanathpur P.S. Case No. 113 of 1992 received an information that the petitioners had possessed fire arms for the purpose of committing an offence. On the basis of such information it is stated that he raided the house of the petitioner Bimal Kumar sahu, who escaped during the

search and seized the arms under Ext. 1 in presence of P.Ws. 1 and 2, who are said to be independent witnesses and P.Ws. 3, 5 and 6, who are official witnesses. Since the petitioners had allegedly possessed arms more than the permissible limits, therefore, a case u/s 27 of the Arms Act was registered against them and P.W. 4 proceeded with the investigation and after closer of the investigation he placed the charge-sheet in court.

3. In order to sustain the charge against the petitioners, prosecution has proved its case through the evidence of P.Ws. 1 to 6, and the learned Magistrate on appraisal of the evidence was, however, inclined to record an order of conviction u/s 27 of the Arms Act and sentenced the petitioners to undergo R.I. for two years and to pay a fine of Rs. 500/- each, in default to undergo further R.I. for two months.

4. Being aggrieved by the order of conviction and sentence passed by the learned Magistrate, petitioners filed an appeal before the learned District & Sessions Judge, Berhampur and the same was eventually transferred to the 2nd Addl. Sessions Judge, Berhampur for disposal. The learned 2nd Addl. Sessions Judge, Berhampur on discussion of the evidence adduced before the Trial Court, agreed with the findings of the learned Magistrate and accordingly upheld the conviction and sentence. Therefore, this case has been filed by the accused-petitioners.

5. Learned Counsel appearing for the petitioners has strongly urged that in this case the prosecution has miserably failed to place the ingredients necessary to bring home the charge u/s 27 of the Arms Act. It is submitted that the prosecution has utterly failed to show that the arms possessed by the accused-petitioners were not meant to use for committing any offence. In order to examine the contentions so raised by the learned Advocate for the petitioners, it is profitable to quote Section 27 of the Arms Act which reads as follows :

"27. Punishment for using Arms, etc.: (1) Whoever uses any arms or ammunition in contravention of Section 5 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.

(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 results in the death of any other person, shall be punishable with death."

6. In this case let me advert to the circumstances placed by prosecution. Mr. Mohanty, learned Addl. Govt. Advocate has highlighted that the prosecution case shall squarely come within the purview of Sub-section (2) of Section 27 of the

Arms Act. Therefore, the punishment ought to have been more than 7 years or some times it may go upto imprisonment for life. I am afraid, such contention is not acceptable in as much as the prosecution has not brought its case of violation of the conditions u/s 7 of the Arms Act, and there has been no charge to that effect. The only charge that has been framed by the learned Magistrate is u/s 27 of the Arms Act. Even on a plain reading of Sub-section (1) of Section 27 of the Arms Act, there is no ambiguity left that the accused, in case the prosecution proves its case, shall suffer an imprisonment for a term not less than 3 years. But it is curious to note how the learned Trial court as well as the Appellate Court did not consider this aspect of the case. Since there has been no notice for enhancement of the sentence, I am not in a position to take into account such fact at the provisional stage.

7. Although the factum of seizure has been believed by the trial court and the appellate court too, yet if such finding is palpably wrong or is based on no evidence the revisional court should reappraise the evidence on record and come to independent findings. P.Ws. 1 and 2 are said to be independent witnesses to seizure. Unfortunately they did not support the prosecution case, P.Ws. 3, 5 and 6 were only official witnesses. P. W. 3 has stated that the seizure list was prepared in his presence, but he did not sign on it. From their evidence it comes to light that P.Ws. 3, 5 and 6 were not present at the time of seizure, but at the time of preparation of seizure list they were present. Undisputedly the house owner-accused Bimal Kumar Sahu was not present at the time of seizure. Therefore, recovery from the possession of Bimal Kumar Sahu has not been proved. When Bimal Kumar Sahu himself was not available, who ought to have explained the circumstances under which he possessed those weapons, how could other persons explain such situation. Moreover, the independent witnesses to the seizure have not supported the prosecution. There is no evidence in the effect that the petitioners possessed the weapons of offence and they intended to use for committing an offence. Although P.W. 4 has stated that while he was investigating a case being Baidyanathpur P.S. Case No. 113/92 under Sections 147, 148, 307 and 149, I.P.C. and Section 9(b) of Explosive Act, he received an information about possession of the weapons of offence by the accused-petitioners, but no record has been produced before the trial court that actually he conducted search while investigating such case. Therefore, in this background the solitary evidence P.W. 4 does not appear to be credible, believable and trustworthy.

8. Accordingly, the conviction and sentence passed by both the courts below u/s 27 of the Arms Act are hereby set aside and the accused-petitioners are acquitted. The bail bond, if any, furnished by the petitioner be treated as cancelled.

The revisional application, therefore, succeeds.