
(2004) 07 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 632 of 2003

Kamalsingh Shiv	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Arms Act, 1959 — Section 25, 25(1B), 3, 39

Citation : (2005) 1 MhLj 218

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : Lubesh Meshram, for the Appellant; Y.B. Mandpe, Assistant Public Prosecutor, for the Respondent

Judgement

P.S. Brahme, J.—Heard Mr. Lubesh Meshram, Advocate, for appellant and Mr. Y. B. Mandpe, A. P. P. for State-respondent.

In this appeal the appellant has challenged his conviction and sentence for offence u/s 3 read with Section 25 of the Arms Act and u/s 128 read with Section 177 of the Motor Vehicles Act by the 4th Additional Sessions Judge, Nagpur in Sessions Trial No. 516/1999 on 24-7-2003 by sentencing him to R.I. for five years and fine of Rs. 500/-, in default to undergo R. I. for one month and fine of Rs. 50/- in default S.I. for 2 days respectively.

2. The prosecution case in brief is that on 10-3-1999, the appellant along with his associates at about 11.00 p.m. at Motibag Road proceeded on their vehicle for committing dacoity by means of weapons and on suspicion the police staff caught them on the spot with fire arms and hence on the basis of complaint u/s 399 read with Section 3 read with Section 25 of the Arms Act the charge sheet was filed against the present appellant on suspicion, it is the case of the prosecution that after filing of the charge sheet the charge was framed against the appellant u/s 399 read with Section 3 of the Arms Act and after calling the witnesses they were examined and evidence was recorded, thereafter the 4th Additional Sessions Judge came to the conclusion and found the present

appellant guilty u/s 3 read with Section 25 of the Arms Act and he sentenced the appellant to five years R. I. with fine of Rs. 500/- and u/s 128 read with Section 177 of the Motor Vehicles Act with fine of Rs. 500/-. It is a matter of record that so far as the conviction and sentence u/s 128 read with Section 127 of the Motor Vehicles Act is concerned, the appellant has already paid fine.

3. The learned counsel for the appellant however, challenged the conviction of the appellant for offence u/s 3 read with Section 25 of the Arms Act mainly on the ground that as required u/s 39 of the Arms Act previous sanction of the District Magistrate was necessary. He therefore submitted that the conviction of the appellant u/s 3 read with Section 25 of the Arms Act cannot sustain, as admittedly there was no previous sanction of the District Magistrate.

4. With the assistance of the learned A. P. P. and learned counsel for the appellant I have gone through the evidence on record and also the judgment of the trial Court. It is very fairly pointed out that so far as this case is concerned, though the appellant was charged u/s 3 read with Section 25 of the Arms Act, there was no previous sanction of the District Magistrate. The provision contained in Section 39 of the Arms Act 1959 is clear wherein it is explicitly written that no prosecution shall be instituted against any person in respect of any offence u/s 3 without previous sanction of the District Magistrate- it is conceded in this case that no such previous sanction was obtained, from the District Magistrate. The learned counsel for the appellant submitted that at the trial this lacuna in the prosecution case regarding previous sanction of the District Magistrate was brought to the notice of the Court. However, it appears that the trial Court has very conveniently lost sight of this mandatory provision and proceeded to convict the appellant for offence u/s 3 read with Section 25 of the Arms Act merely on the basis of the recovery of the country made revolver from the possession of the appellant. There is therefore, absolutely no hesitation in saying that the trial Court committed an error in holding the appellant guilty for offence u/s 3 read with Section 25 of the Arms Act. It is pointed out by the learned counsel for the parties that even on the point of awarding sentence the trial Court has committed an error in as much as the punishment provided for offence u/s 3 as per Section 25 of the Arms Act is that of imprisonment for a term which shall not be less than one year, which may extend to three years and shall also be liable to fine. What is surprising again is that under the proviso the Court may for any adequate and special reasons be recorded in the judgment impose a sentence of imprisonment for a term of less than one year. This provision u/s 25 of the Arms Act clearly goes to show that so far as the punishment is concerned, the minimum punishment shall be of imprisonment for one year and the maximum punishment of imprisonment may extend to three years. The proviso further makes it clear that even in respect of minimum sentence for adequate and special reasons to be recorded in the judgment the Court may impose a sentence of imprisonment for a term of less than one year. It seems that the trial Court has been very callous in inflicting the punishment and sentence in the sense the trial Court has awarded sentence without going into the provisions made in the

Indian Arms Act and more particularly the provisions contained in Section 25 which is a section making provisions for punishment. Therefore, the trial Court has no doubt committed an error in awarding sentence. Having regard to the fact that the learned counsel who is appearing for the appellant has submitted that the legal provision in regard to the punishment for offence u/s 3 of the Arms Act as provided u/s 25 of the said Act was brought to the notice of the trial Court, still the trial Court has proceeded to award the sentence which was totally uncalled for and was not permissible under the provisions of Section 25 of the Arms Act. In this view of the matter while disposing of this appeal it is made clear that the copy of this judgment be sent to the trial Court through the District Judge concerned so that the trial Court shall take note of the observations made by this Court and the trial Judge shall at least make endeavour to be very circumspect and also aware of the provisions while in future passing the order of conviction and sentence. Hence the order.

ORDER

5. The appeal is partly allowed. The conviction and sentence, imposed on the appellant for the offence under Sections 128 and 177 of the Motor Vehicles Act is maintained. However, the appellant's conviction and sentence for offence u/s 3 read with Section 25 of the Indian Arms Act is quashed and set aside. The appellant shall be released forthwith if not required in any other case. Rest of the order in respect of disposal of the property is maintained.