
(2008) 04 MP CK 0028
In the Madhya Pradesh High Court

Shakir @ Govinda

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Arms Act, 1959 — Section 25, 4

Citation : (2008) ILR (MP) 68 : (2008) 2 MPHT 460

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—The applicant being aggrieved by the judgment dated 29.01.2004 passed by the learned Additional Sessions Judge, Indore in Criminal Appeal No. 15/2004 confirming the judgment of conviction and sentence dated 19.12.2003 passed by the learned Judicial Magistrate First Class, Indore in Criminal Case No. 623/2003 convicting the applicant u/s 25(1-B) (b) of the Arms Act and sentencing him to undergo RI for 1 year and pay fine of Rs. 500/-; in default of payment of fine, to undergo RI for 1 month, has filed this revision petition.

2. The prosecution case, in brief, is that Sub Inspector Bishan Singh Chouhan (PW-1) on 18.06.2003 at about 10.35 p.m. while was patrolling the area, received the information from the informer that the present applicant was standing in front of Machhi Bazar pub area with a knife. Immediately thereafter Bishan Singh Chouhan reached the spot. The accused, seeing them coming, wanted to run away from the spot, but was apprehended. In presence of the witnesses, seizure memo was prepared, knife was recovered and seized, the accused was taken into custody and was brought to the Police Station. After coming back to the Police Station, first information report was registered. After recording the statement of witnesses and collecting the material to connect the applicant with the offence so charged, the prosecution filed the charge sheet. The accused denied commission of the offence, therefore, was subjected to the trial. On conclusion of the trial, learned trial Court convicted and sentenced the

accused as referred to above and as his appeal proved futile, the applicant has filed this revision petition.

3. Apart from raising question on the merits of the matter, Mr. Rathore, Learned Counsel for the applicant, after taking this Court through Section 25(1-B)(b) and Section 4 of the Arms Act, 1959, submitted that a person can be convicted u/s 25(1B) (b) of the Arms Act only if such person acquires, has in his possession or carries in any place specified by notification u/s 4 any arms of such class or description as has been specified in that notification in contravention of Section 4 and as in this case, notification issued u/s 4 of the Arms Act, has not been produced or proved before the Courts below, the applicant could not be convicted u/s 25(1-B)(b) of the Arms Act.

4. Mr. Chouhan, Learned Counsel for the respondent/State, on the other hand, submitted that in a case like present where the accused was found in possession of a knife, blade of which was almost about 11 1/2 inches, he has been rightly convicted by the Courts below.

5. To properly appreciate the arguments raised by Mr. Rathore, it would be necessary to refer to Section 25(1-B)(b) and Section 4 of the Arms Act. Section 25(1-B)(b) of the Arms Act provides that whoever - acquires, has in his possession or carries in any place specified by notification u/s 4 any arms of such class or description as specified in that notification in contravention of that section; 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. Section 4 of the Arms Act, 1959 reads as under:

4. Licence for acquisition and possession of arms of specified description in certain cases. -If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

6. According to Section 4 of the Arms Act, if the Central Government is of the opinion that certain restrictions should be placed on acquisition, possession or carrying of arms other than firearms, then a notification is to be issued by the Central Government directing that Section 4 shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description, as may be specified in the said notification without a licence.

7. Conjoint reading of Section 4 and Section 25(1-B)(b) of the Arms Act would make it clear that the Central Government has to form its opinion and then issue

a notification u/s 4 of the Arms Act to regulate possession of the arms. If the notification is issued u/s 4 of the Arms Act, not only the area is to be specified but class or description of the arms is also to be provided. After such a notification is issued, if any person is found in possession of the arms of such description or class without a licence in the notified area, then only, such a person can be convicted u/s 25(1-B)(b) of the Arms Act.

8. In the present case, the prosecution unfortunately did not bring on record the notification issued u/s 4 of the Arms Act, 1959. In the considered opinion of this Court, in absence of such a notification, the accused could not be convicted for offence punishable u/s 25(1-B)(b) of the Arms Act. Mr. Chouhan, however, at this stage submitted that possession of the arms of a particular size in general, have also been made punishable and, therefore, the accused can safely be convicted in view of the said notification. Unfortunately, such a notification on which Mr. Chouhan places reliance is also not on record. The said argument would assume importance only if the accused had been charged for some offence in view of the said notification. The charge against the accused is not for possessing arm contrary to some notification but the charge is for committing offence punishable u/s 25(1-B)(b) of the Arms Act.

9. As the prosecution has failed to prove or bring on record the notification regulating possession of arm of the class or description in a particular area, the accused could not be convicted.

10. The revision deserves to be and is accordingly allowed. The accused is on bail. His bail bonds are discharged. The fine amount deposited by the accused, if any, be refunded back to him.