

(2012) 08 GAU CK 0044
In the Gauhati High Court
Case No : Criminal Revision No. 538 of 2004

Smti Kanchani Bora

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Arms Act, 1959 — Section 25(1B)(a), 3, 3(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2012) 08 GAU CK 0044

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : B.D. Konwar, Ms. J.M. Konwar and Mr. D Borah, for the Appellant; K Munir, Advocate Addl. Public Prosecutor., for the Respondent

Judgement

I.A. Ansari

1. By judgment and order, dated 14-07-2004, passed in Criminal Appeal No. 16 of 2004, the learned Sessions Judge, Golaghat, has dismissed the appeal and upheld the judgment and order, dated 03-03-2004, passed, in GR Case No. 365 of 1998, by the learned Additional Chief Judicial Magistrate, Golaghat, convicting the accused-petitioner, u/s 25(1-B)(a) of the Arms Act, 1959, and also u/s 53(1) of the Assam Excise Act, 1910, and sentencing her to undergo, for her conviction u/s 25(1-B)(a) of the Arms Act, 1959, simple imprisonment for a period of one year and pay fine of Rs.300/- and, in default of payment of fine, undergo simple imprisonment for another period of one month and also to undergo, for her conviction u/s 53(1) of the Assam Excise Act, 1910, simple imprisonment for one month and pay fine of Rs. 100/- and, in default of payment of fine, undergo simple imprisonment for a period of 5 days. However, by the judgment and order, dated 14-07-2004, the Learned Sessions Judge, Golaghat, modified the sentences, which have been passed against the accused-petitioner, by making it clear that the sentences shall run concurrently and not consecutively. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) In connection with an enquiry, which the police had been conducting against an accused, Md. Akanti Ail, the police party, on 14-05-1998, searched the house of the present accused-petitioner, namely, Smti Kanchani Bora, and found, in her possession, one single barrel gun without a licence in her name. The gun, in question, was seized along with its Licence, which stood issued in the name of Kulia Thengal illicit Liquor, which was being sold without Licence. Following the seizures, a First Information Report was lodged, at Merapani Police Station, by PW5, who was a police officer. Based on the First Information Report, so Lodged, a case u/s 25(1-B)(a) of the Arms Act, 1959, and u/s 53(1) of the Assam Excise Act, 1910, was registered against the present accused-petitioner and, on completion of investigation, charge-sheet was accordingly Laid against her and said Md. Akanti Ali.

(ii) During the course of trial, charges, u/s 25(1-B) (a) of the Arms Act, 1959 and u/s 53(1) of the Assam Excise Act, 1910, were framed against both the accused aforementioned and they pleaded not guilty thereto.

2. In support of their case, prosecution examined altogether six witnesses including the police officer (PW5), who had conducted the search and made the seizure. The accused persons were, then, examined u/s 313 Cr.P.C. and, in her examination aforementioned, the accused-petitioner denied that she had committed the offence, which was alleged to have been committed by her, the case of the defence being that of denial. No evidence was adduced by the defence.

3. Having, however, found the accused-petitioner guilty of the offences charged with, learned trial Court convicted her accordingly and passed sentences against her as mentioned above. Aggrieved by her conviction and the sentences passed against her, the accused-petitioner preferred an appeal, which, as indicated above, has been dismissed except modification in the sentences as have been pointed out above. Since the appeal did not yield the desired result, the accused-petitioner has, now, with the help of this revision, put to challenge her conviction and the sentences passed against her.

4. I have heard Mr. R Kalita, Learned counsel, appearing on behalf of the accused-petitioner, and Mr. K Munir, Learned Additional Public Prosecutor, Assam, for the opposite party.

5. While considering this revision, it needs to be noted that in the appeal, which the accused-petitioner had preferred, the findings of the Learned trial Court that the accused-petitioner had been found to be in possession of the said gun without Licence in her name and/or that she had been found in possession illicit Liquor without Licence had not been challenged at the time of hearing of the appeal. In effect, thus, in the appeal aforementioned, the conviction of the accused-petitioner u/s 25(1-B) (a) of the Arms Act, 1959 remained unchallenged.

6. What was prayed, on behalf of the appellant, at the time of hearing of the appeal, was reduction of the punishment. In this regard, the Learned appellate

Court pointed out that Section 25(1-B)(a) of the Arms Act, 1959, prescribes the minimum punishment of one year and also fine and, hence, when the sentence, in the present case, was to undergo simple imprisonment for a period of one year and pay fine of Rs. 300/-, the punishment, for the conviction of the accused appellant u/s 25(1-B)(a) of the Arms Act, 1959, could not have been interfered with. As regards the sentences, which had been passed against the petitioner, for her conviction u/s 53(1) of the Assam Excise Act, 1910, the Learned Court pointed out that as the accused-petitioner had been sentenced, in this regard, to undergo simple imprisonment for a period of five days, the same was very Lenient and did not call for any interference and, thus, there was no scope for the Learned appellate Court to interfere with the sentence either.

7. Since, the findings of guilt and the conviction of the accused-petitioner had not been challenged at the time of hearing of appeal, it is not feasible in Law to challenge, now, the conviction of the accused-petitioner in this revision for the offences, which the accused-petitioner has been found guilty of.

8. Considering, however, the fact that provisional jurisdiction can be exercised by the High Court sue moto, this Court has examined the record and what this Court finds is that the police officer (PW5), who was the informant of the case, has clearly deposed that he had found the present accused-petitioner in possession of a few Liters of illicit Liquor and also in possession of the said gun along with a Licence therefor, which was in the name of Kulia Thengal. Apart from the fact that the evidence of PW5 was corroborated by other evidence on record, there was really no cross-examination of PW5 to show that what he had deposed was untrue or false. Far from this, the accused-petitioner herself stated, while she was examined, u/s 313 Cr.P.C., that the gun, in question, belongs to Kulia Thengal, who had brought the gun with intent to hand over the same to Merapani Police Station, but due to some inconvenience, he failed to do so and gave the gun in the zimma (custody) of the accused-petitioner with a view to handing the gun over to the police on the following day, but the said Kulia Thengal fell ill and could not take the gun to the police station.

9. In effect, thus, the accused-petitioner admitted that she had the possession of the gun, in question, without having any Licence therefor. u/s 3 of the Arms Act, 1959, no person shall have, in his possession, any firearm or ammunition without a Licence issued in accordance with the provisions of the Arms Act, 1959. It was in contravention of the provisions, so embodied in Section 3(1) of the Arms Act, 1959, that the accused-petitioner had, in her possession, the said gun without Licence having been issued in her name. If any one contravenes the provisions of Section 3 by having, in his possession, any firearms, his act of possessing the gun is punishable with imprisonment, which may extend to three years and shall also Liable to fine, but the minimum sentence prescribed is one year.

10. In the case at hand, the evidence on record proves beyond reasonable doubt that the accused-petitioner was found, in possession of the said gun in contravention of the provision of Section 3 of the Arms Act, and, hence, she was

Liable to be convicted u/s 25(1-B)(a) of the Arms Act, 1959. The conviction of the accused-petitioner, therefore, u/s 25(1-B)(a) of the Arms Act, 1959, cannot be said to be bad in Law. Similarly, she was, according to the overwhelming evidence on record, found in possession of illicit Liquor and any one, who is found in such possession of such Liquor, is punishable by imprisonment, which may extend to two years and with fine. Thus, the conviction of the accused-petitioner, u/s 53(1) of the Assam Excise Act, 1910, and the punishment, imposed on her, did not, as correctly noted by the learned appellate Court, warrant interference.

11. Considering the fact that it is admitted position, as reflected from the evidence of PW5 and the seizure of the gun Licence, that the Licence stood in the name of Kulia Thengal and there is nothing on record to show that what the accused-petitioner had stated, while being examined u/s 313 Cr.P.C., as to how she happened to come to possess, the said gun, this Court is of the view that in the facts and attending circumstances of the present case, the accused petitioner's possession of the said gun was not of such a nature as ought to have entailed the minimum prescribed punishment of simple imprisonment for a period of one year. Under the proviso to Section 25(1-B)(a) of the Arms Act, 1959, the Court is empowered to impose, for special and adequate reasons to be assigned, in writing, a sentence lesser than the prescribed minimum punishment of one year.

12. Considering, therefore, the fact that the accused-petitioner is a widow, she is the only source of Livelihood for her children and there is nothing on the evidence on record to show that she was in possession of the gun, in question, knowing that she had been contravening the provisions of Section 3 of the Arms Act, 1959, and since she had kept the gun, in her possession, in good faith, this Court is of the view that a period of simple imprisonment for two months, with fine of Rs.100/-, would serve the ends of justice for the offence, which has been committed by the accused-petitioner, u/s 25(1-B)(a) of the Arms Act, 1959. This Court, therefore, sentences the accused-petitioner to undergo, for her conviction u/s 25(1-B)(a) of the Arms Act, 1959, simple imprisonment for a period of two months and pay a fine of Rs. 100/- and, in default of payment of fine, suffer simple imprisonment for a period of seven days. For her conviction u/s 53(1) of the Assam Excise Act, 1910, she is hereby sentenced to undergo simple imprisonment for a period of 15 days and pay fine as directed by the Learned trial Court and, in default of payment of fine of Rs. 100/-, she shall undergo simple imprisonment for a further period of 5 days.

13. In the result and for the reasons discussed above, while the conviction of the accused-petitioner, u/s 25(1-B)(a) of the Arms Act, 1959, and u/s 53(1) of the Assam Excise Act, 1910, are maintained, her sentence is reduced to the period as mentioned above.

14. With the above modification in the sentence, which was passed against the accused-petitioner, this revision is disposed of with direction to the accused-

petitioner to surrender, forthwith, in the Court of the learned Chief Judicial Magistrate, Golaghat, to serve out the sentence of imprisonment passed against her. Send back the LCR along with a copy of this judgment and order.