

MHMM140039332019



Filed on : 20.11.2019
Registered on : 20.11.2019
Decided on : 26.08.2024
Duration : 04Y- 09M-06D

Exh. : 21

IN THE COURT OF THE JUDICIAL MAGISTRATE (FIRST CLASS),
40TH COURT, GIRGAON, MUMBAI.
(PRESIDED OVER BY SHRI. S. R. NIMSE)
JUDGMENT U/S.355 OF THE CODE OF CRIMINAL PROCEDURE

- (a) The serial number of the case : **C.C. No. 435/PW/2019**
(CNR No.MHMM14-003933-2019)
- (b) The date of the commission of : On 11.10.2019 at about 02.18
the offence p.m.
- (c) The name of the Informant : The State (Malbar Hill Police
Station in C. R. No.07/2019)
- (d) The name of the accused : **Suryakant Baban Kokare**
person/s, age and residence; Age – 32 Years, Occ.- Service
Res:- Room No.420, Arab Galli,
Napean Sea road, Malbar Hill,
Mumbai-36.
- (e) The offence complained of : Under Sections 4, 25 The Arms
Act and 37(1)(a)135 Bombay
Police Act.
- (f) The plea of the accused and : Accused pleaded not guilty.
his examination
- (g) The final order : As per final order

(h) The date of such order : 26.08.2024

Appearance Ld. APP for the State : Shri. B. U. Gavali.
Ld. Adv. for the accused : Shri. Kamlesh More

J U D G M E N T
(Delivered on 26.08.2024)

1. Accused is facing trial for the offences punishable Under Sections 4, 25 The Arms Act and 37(1)(a)135 Bombay Police Act.

Factual matrix of the prosecution case are as under ;

2. The informant Dhiraj Pawar was police constable in Malbar Hill police station. On 11.10.2019 he was on patrolling duty. At 02.48 p.m. he received message that one person is roaming with the knife and threatening others in Premnagar area. Accordingly, he went to Premnagar area. He found one person in possession of chopper. He sent message to the police station for additional force. Accordingly, mobile van came on the spot. Accused tried to ran away. He was caught hold on the spot. One chopper was recovered from the accused by panchanama. Thereafter, the informant Dhiraj Pawar lodged FIR against accused.

3. As per FIR, crime No.07/2019 registered against the accused. Thereafter, Investigating Officer conducted investigation. He has arrested the accused, recorded statement of witnesses, obtained relevant documents and after completion of investigation submitted charge-sheet against the accused.

4. My Learned Predecessor has framed charge against the accused vide Exh.3 and it read over and explained to accused in vernacular, to which he

pleaded not guilty and claimed to be tried.

5. The prosecution has examined following witnesses.

1. Informant – PW1 Dhiraj Pawar - Exh. 9,
2. Nath Lokhande – API CBD - PW2 – Exh.14,

The prosecution has relied upon following documents.

1. FIR at Exh. 10
2. Seizure panchanama at Exh. 16
3. Copy of notification at Exh.17
4. Letter written to DCP office at Exh.18

Seized chopper is at Article A.

6. After completion of prosecution evidence, statement of accused U/sec.313 of Criminal Procedure Code is recorded at Exh.19. His defence is of total denial and false implication. He has not given any defence evidence.

7. Following points are arises for my determination and I have recorded my findings for the reasons thereon is as below ;

<u>Sr.</u> <u>Nos</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prosecution proves that on 11.10.2019 at about 02.18 p.m. near Premnagar zopadpatti toilet, Malbar Hill, Mumbai, accused was found in possession of iron chopper without holding licence and thereby committed an offence punishable U/sec. 4,25 Arms Act ?	..Not proved
2.	Whether prosecution proves that on aforesaid date, time and place, accused violated the order of the Commissioner of Police and thereby committed an offence punishable u/sec.37(1)(a)135 Bombay Police Act ?	..Not proved

3. What order ?

As per
final order

REASONS

8. Heard Ld. A.P.P. for State and Ld. Adv. for accused at length. Perused documents filed on record.

AS TO POINT NO. 1 & 2 :-

9. PW1 the informant Dhiraj Pawar deposed as per his FIR. He stated that on 11.10.2019 he was on patrolling duty. At 02.48 p.m. he received message that one person is roaming with the knife and threatening others in Premnagar area. Accordingly, he went to Premnagar area. He found one person in possession of chopper. He sent message to the police station for additional force. Accordingly, mobile van came on the spot. Accused tried to ran away. He was caught hold on the spot. One chopper was recovered from the accused by panchanama. He can identify the accused. FIR is at Exh. 10 and chopper is at Article A.

10. The informant Dhiraj Pawar admitted in his cross examination that during that period, special drive is being conducted as per order of superior officer. Special mark is not given to the seized weapon. He has not physically inspected the accused. Premnagar is slum and crowded area.

11. PW2 Nath Lokhande is Investigating Officer. He has deposed about the investigation conducted by him. Seizure panchanama is at Exh. 15. Arrest panchanama is at Exh. 16. copy of notification is at Exh. 17.

12. Investigating Officer admitted that independent witness has not been examined. He stated that it was afternoon and accused was having weapon in possession. Hence no one was present there. The informant Dhiraj Pawar

admitted that Premnagar is slum and crowded area. Incident occurred in afternoon. It is highly impossible that in city like Mumbai, in afternoon period independent witness is not available in slum area. Hence reason for non examination of independent witness is not satisfactory.

13. It is the case of prosecution that weapon is seized from the accused on the spot by panchanama. But panch is not examined by the prosecution. The informant was BIT marshal. As per his FIR, he reached on the spot and found the accused with chopper. Thereafter, he called the mobile van. After seeing the mobile van, accused tried to run away. This theory is also not acceptable that after reaching BIT marshal, accused was there and after seeing the mobile van, he tried to run away.

14. No independent witness is examined in the present case. Panch witnesses are also not examined. The informant admitted that he has not physically inspected the accused and special mark was not given to the seized weapon. Only police witnesses have deposed against the accused. The informant is also admitted that during that period, special drive is being conducted by order of superiors. Under such circumstances, it will not be proper to rely solely upon evidence of police witnesses.

15. Thus, the prosecution has failed to prove that on 11.10.2019 one chopper was found in the possession of the accused. Prosecution has failed to prove the case against the accused beyond reasonable doubt. Therefore, accused is entitled to be acquitted from the charges levelled against him. Therefore, I answered points No.1 & 2 in the negative. Hence for answering point No.3, I pass following order :-

:- ORDER :-

1. Accused **Suryakant Baban Kokare** is hereby acquitted of the offences punishable Under Sections 4, 25 The Arms Act and 37(1)(a)135 Bombay Police Act vide Section 248(1) of the Code of Criminal Procedure.

2. Bail bonds of accused stand cancelled. Sureties if any, be discharged.
3. Accused to furnish PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) for appearance before the Hon'ble Appellate Court, in case appeal is filed against the judgment of this Court vide Section 437(A) of the Cr.PC which will be valid for next six month.
4. Seized muddemal i.e. One chopper be sent to the District Collector for disposal as per law after appeal period is over.
5. Dictated & declared in the open Court.

Date:- 26.08.2024

(S. R. Nimse)
Judicial Magistrate (First Class),
40th Court, Girgaon, Mumbai.

Dictated on : 26.08.2024
Transcribed on : 26.08.2024
Signed on : 26.08.2024

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