

**In the court of Ms. Rajbinder Kaur,
Judicial Magistrate, Ist Class, Nakodar.**

CNR No. : PBJLA10011232020
Case No : CHA/106/2020
Date of Instt : 11.06.2020
Decided on : 16.08.2023

State Versus

Harminder Singh son of Mukhtiar Singh R/o Gobind Nagar (Khudde), PS
Mehatpur, District Jalandhar.

. . . Accused.

FIR No. 95 dated 20.06.2019
U/s 25-54-59 of Arms Act
Police Station Mehatpur.

Present: Sh. Bharat Bhushan, Ld. APP for State.
Accused on bail with Sh. N.S. Khaira, Advocate.

JUDGMENT:-

1. Accused has been sent up by the Station House Officer of
Police Station Mehatpur to face trial for the offence punishable under
Section U/s 25-54-59 of Arms Act.

2. Brief facts of the case are that on 20.06.2019 ASI Gurcharan
Singh alongwith other police party was present at Adraman turn Mehatpur in
order to checking of suspicion persons. Where one secret informer came to
police official and gave information that Harminder Singh son of Mukhtiar
Singh R/o Gobind Nagar (Khudde) is having one pistol and he usually keeps
with him. Now he is waiting for someone at Y point Baloki Road. If raid is
conducted he can be apprehended alongwith pistol. On believing
information trustworthy, ruka was sent through PHG Major Singh. ASI
alongwith other police party raided at the place disclosed by the informer
and found one person standing there. On seeing police party said person
tried to ran away from the spot towards link road. With the efforts of police

officials he was apprehended and on inquiry he disclosed his identity as Harminder Singh son of Mukhtiar Singh R/o Gobind Nagar (Khudde) PS Mehatpur, District Jalandhar. Before checking of above said person police tried to involve public witness but nobody consented. Thereafter, while personal search of accused Harminder Singh one pistol 315 bore without number was recovered, that was taken into police possession vide recovery memo. Sketch was prepared at the spot. Seal was handed over to HC Balwant Singh after use. Accused was arrested after inquiry. Statement of witnesses were recorded. On 21.06.2019 accused was send to judicial custody. The accused was arrested. After completion of investigation challan was presented in the court.

3. On appearance of accused copies of the report under section 173 Cr.P.C alongwith other documents were supplied to the accused under section 207 Cr.P.C.

4. Finding a prima facie case, for the offence punishable under Section 25 of Arms Act charge was framed against the accused. Contents of the charge was read over and explained to accused but he pleaded not guilty thereto and claimed trial.

5. Prosecution examined PW1 PHG Jaswinder Singh who deposed and proved documents i.e recovery memo Ex.PW1/A, arrest memo Ex.PW1/B, personal search memo Ex.PW1/C.

PW2 is Jai Parkash who stepped into witness box and proved document i.e bill Ex.PW2/A.

PW3 is ASI Bhajan Singh.

PW4 is MHC Kashmir and PW5 is L/Ct Rajdeep Kaur.

Thereafter no other witness was examined by prosecution despite taking many opportunities and evidence of prosecution was closed by order.

6. I have heard learned APP for the State, learned counsel for accused and gone through the oral as well as documentary evidence on record.

The points for determination in the present case are that:-

1) Whether on 20.06.2019 at about 06:45 pm in the area of Adraman turn Mehatpur, you accused was found in possession of one pistol 315 bore without any permit of license and thereby committed offence punishable under Section 25 of Arms Act?

7. Arguments heard. Ld. APP argued that the prosecution has proved the guilt of accused by producing all material witnesses alongwith record on file. The accused was found in possession of oneone pistol 315 bore without any permit or license to carry the same. The accused neither through cross-examination of any prosecution witness nor by leading any evidence could be able to prove that he had any authority to carry the said weapon. Despite lengthy cross-examination no dent can be put upon the evidence of prosecution witnesses. He prayed to convict and punish accused persons accordingly.

8. To the contrary, ld defence counsel contended that the entire case of prosecution is based on false facts and accused has been falsely implicated due to political grudge in village. No independent witness was joined while alleged recovery. Even necessary sanction of District Magistrate has not been proved, There are material discrepancies in the

statements of witnesses of prosecution which cause doubt in the prosecution version. The case property never produced in Court during evidence. He prayed to acquit accused on all these accounts.

9. In the statement recorded under section 313 Cr.P.C all the incriminating evidence was put to accused who denied the same and pleaded false implication. Accused closed his defence evidence without examining any witness.

10. For proving its case, the prosecution has examined as many as five witnesses in order to establish the charges leveled against accused Harminder Singh u/s 25 of Arms Act. PW1 PHG Jaswinder Singh has deposed that on 20.06.2019 IO joined him in the investigation and Investigating Officer recovered one country made pistol 315 bore from accused Harminder Singh and same was taken into police possession vide recovery memo and he was arrested. He proved recovery memo, arrest memo, and memo of personal search of accused. In his cross-examination he has denied the suggestion of ld defence counsel that a false case has been planted upon accused in connivance with Investigating Officer.

11. The prosecution examined Jai Parkash as PW2 who has deposed that on 06.09.2019 ASI Gurcharan Singh moved an application for purchasing five alive cartridges of 315 bore for testing purpose. He proved the bill of same. PW2 has stated that he has not seen the application moved by police filed for purchase of cartridges and he does not know the facts of the present case. He further stated that no recovery was effected in his presence and he does not take part in the investigation and he has not seen the cartridges sold by him in the Court.

12. ASI Bhajan Singh has been examined as PW3 who has stated that on 20.06.2019 ASI Gurcharan Singh Investigating Officer handed over case property i.e one desi revolver of 315 bore, which he kept in malkhana. In his cross-examination he has stated that he has not seen case property today in the Court and no recovery effected in his presence.

13. The another witness of prosecution is PW4 MHC Kashmir Singh who also deposed that on 20.06.2019 he was posted as MHC at PS Mehatpur and IO ASI Gurcharan Singh deposited before him the case property i.e one pistol of 315 bore and he kept the parcel in police malkhana. He stated that he has seen case property in Court as MO1.

14. The last witness examined by prosecution is Ct. Rajdeep Kaur who has stated that on 04.11.2019 MHC Kashmir Singh handed over one sample parcel contained one pistol and five live cartridges for depositing the same in the office of FSL, Mohali and she deposited the said parcel in said office on 04.11.2019 and handed over the receipt regarding it. She stated that neither she tampered with the sample parcel nor she allowed anyone to tamper the same. In her cross examination she has stated that she does not know the accused personally and she has not joined investigation in the present case and that no recovery was effected in her presence from accused.

15. After scrutinizing their testimony carefully, I have come to the considered opinion that the prosecution could not be able to prove the charges levelled against accused that on 20.06.2019 he was found in possession of a pistol 315 bore. **First of all** it was incumbent upon prosecution to prove that the said weapon allegedly recovered from accused,

was in working condition. But the prosecution could not produce any such evidence to establish that the said pistol allegedly recovered from accused was in working condition. However the prosecution has examined shopkeeper Jai Parkash as PW2 who has deposed that ASI Gurcharan Singh moved an application for purchasing five alive cartridges for the purpose of testing of the weapon but Investigating Officer ASI Gurcharan Singh has not been examined by prosecution despite availing numerous opportunities to corroborate the testimony of PW2 that the five alive cartridges were purchased for testing of the alleged weapon. Even no such expert or official has been examined to establish that he ever tested the weapon allegedly recovered from accused, by firing with any of said five alive cartridges.

16. **Secondly**, the testimony of prosecution witnesses are full of contradictions. The prosecution examined ASI Bhajan Singh who deposed that on 20.06.2019 he was posted at PS Mehatpur and one desi revolver of 315 bore was handed over to him by IO Gurcharan Singh and he kept the same in malkhana and made entry at register no. 19. The prosecution has examined another witness MHC Kashmir as PW4 who has also deposed the same version that on 20.06.2019 he was posted as MHC PS Mehatpur and on said date IO ASI Gurcharan Singh deposited before him the case property i.e one pistol of 315 bore sealed with seal impression GS and he kept the said parcel in police malkhana and made entry regarding the same in register no 19. Both said witnesses PW3 ASI Bhajan Singh and PW4 MHC Kashmir Singh have deposed about different weapons. PW3 says weapon was revolver and PW4 says weapon was pistol. Further PW3 ASI Bhajan Singh stated that ASI Gurcharan Singh IO handed over one pistol of 315 bore on

20.06.2019 to him and he was deposited it in police malkhana. I have perused the police report wherein it is mentioned that ASI Gurcharan Singh handed over case property to PW3 HC Bhajan Singh MHC. Perusal of list of witnesses reveals that HC Kashmir Singh has been mentioned as PW for proving the process of sending the case property for examination. But the perusal of testimony of MHC Kashmir Singh PW4 reveals that he has not stated anything about sending the case property to the office of FSL, Mohali rather it has deposed entirely different facts that case property was deposited to him for keeping the same in police malkhana. Said witness PW4 has not stated a single fact with regard to sending the case property to the office of FSL Mohali for its examination. The said discrepancy found in the prosecution witnesses are creating cloud of suspicion on the veracity of the testimony of prosecution evidence. It appears that MHC Kashmir Singh PW4 has never sent the case property to the office of FSL for its examination as he did not state any single word in his testimony in this regard. It is also apparent from the evidence of both said witnesses PW3 and PW4 that even the prosecution was not aware that both said official witnesses PW3 and PW4 are stating the fact that IO Gurcharan Singh handed over case property to them on 20.06.2019 whereas the case property was handed over to PW ASI Bhajan Singh only by the IO for depositing in the police malkhana as mentioned in the police report. The said infirmity in the prosecution evidence is making the evidence of prosecution highly dubious.

17. **Thirdly**, the material witness ASI Gurcharan Singh who was complainant and the Investigating Officer of the present case could not be

examined by prosecution despite availing number of opportunities. Persusal of file reveals that summons have been issued to ASI Gurcharan Singh number of times which received served with the report that ASI Gurcharan Singh suffered an attack and is not able to move and speak. As such the material facts and proceeding of investigation in the present case remained unproved.

18. One more point of consideration here is that as per the prosecution version said pistol 315 bore was recovered from accused Harminder Singh on 20.06.2016 on receiving a secret information. Meaning thereby the said recovery was not a chance recovery and the police had opportunity to join an independent witness at the time of raid said to have been conducted. However it is mentioned in the police report that ASI tried to involve a witness from public but none was ready. But no such document/memo has been proved on file to show that the Investigating Officer made any effort to join any independent witness before conducting raid on receiving secret information. It is matter of record that the alleged place of occurrence/recovery is a thoroughfare. Therefore, joining of an independent witness at the time of conducting raid and while the search of accused in such circumstances appears to be necessary and it was incumbent upon the Investigating Office to make it part of record if any person refused to join the police party at the time of alleged recovery from accused. The non joining of independent witness in the present case at the spot also creates doubt on the version of prosecution. The above mentioned facts shows that the police did not make any effort to join any independent witness at time of search of accused.

19. Lastly and significantly, the prosecution has not proved the necessary permission required to be obtained from District Magistrate before presenting the challan in the present case. Perusal of file reveals that a sanction letter issued by Additional Deputy Commissioner Jalandhar dated 03.06.2020 has been placed on file but said letter has not been proved by any of the witnesses examined by prosecution. As such the said document which has neither been exhibited nor has been proved by the prosecution on record, cannot be read into evidence. As per Section 39 of Arms Act, no prosecution shall be instituted against any person in respect of any offence under Section 3 without previous sanction of District Magistrate. Therefore the said sanction if obtained from District Magistrate, before prosecution of accused, must have been proved on record as per provisions of law but prosecution failed to prove the same.

20. It is the Cardinal principle of criminal jurisprudence that burden is always upon prosecution to establish its case against the accused and that too beyond the shadows of reasonable doubts. In **Ramesh versus State of Haryana 2006 (3) RCR Criminal 1** the Hon'ble Punjab and Haryana High Court has held that "*onus to prove criminal offences is on prosecution. Burden of proof never shifts on the accused*". In the instant case as discussed above the prosecution has failed to discharge the burden which laid on its shoulders. It is also settled principle of law that in case of doubt, the benefit of the same is given to the accused. In view of the above detailed discussion and aforesaid reasons I am of the considered opinion that the prosecution version is suffering from material discrepancies and infirmities discussed in preceding paras. The prosecution could not be able to prove the factum of

alleged recovery of pistol 315 bore from the accused by leading any forcible and relevant evidence and as such it failed to establish his guilt under Section 25 of Arms Act. Accordingly the benefit of doubt is given to the accused Harminder Singh. Resultantly, the said point of determination is answered in negative.

CONCLUSION

21. In sequel to my above findings, I am constrained to hold that the prosecution has failed miserably to establish its case against the accused Harminder Singh beyond the shadows of all reasonable doubts. In view of the foregoing discussion, it transpires that there is no inculcating evidence against the accused Harminder Singh to hold him guilty for the offences alleged to have been committed by him. Resultantly, the accused namely Harminder Singh is acquitted of the charge framed under Section 25 of Arms Act by giving him benefit of doubt. The accused is directed to furnish the surety bonds as prescribed under section 437-A of IPC. Case property be disposed of as per rules after the expiry of period of appeal/revision if any. File be consigned to the record room, Nakodar.

Note: Certified that all the ten pages of
this judgment are signed by me, which
have been dictated to judgment writer directly on computer.

Pronounced in open court on:
16.08.2023

Nitin Kumar JW

(Rajbinder Kaur),PCS
Judicial Magistrate First Class
Nakodar
UID No. PB0-390

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