Gunwantlal

Vs

The State of Madhya Pradesh

Criminal Appeal No. 241 of 1969

(G. K. Mitter, P. Jagmohan Reddy, K. K. Mathew JJ)

03.05.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is by special leave challenging the judgment of the High Court which dismissed a Revision petition field by the appellant against the framing of a charge by the Magistrate of the 1st Class Neemuch. The charge was that on or before September 17, 1966, at Neemuch, the appellant was found in possession of and having control over one revolver without a valid license and that by so doing had committed an offence under Section 25(a) of the Indian Arms Act (hereinafter called the Act).

2. It appears that one Miroo who was accused of an offence under Section 302 of the Indian Penal Code gave information to the police on September 16, 1966, during the course of an investigation of that offence, that the appellant had given him a revolver which he had kept with one Chhaganlal at the village Karoonda in the State of Rajasthan. On that information, the revolver was seized from the said Chhaganlal on the next day namely on September 17, 1966. The police at Neemuch applied for sanction under Section 39 of the Act to prosecute the appellant for an offence under Section 25(a) of the Act. The sanction was granted by the District Magistrate, Neemuch on November 4, 1967. The sanction states that the appellant had "allegedly been found in possession of and having under his control one revolver without a valid licence at Neemuch Police Station, Neemuch on September 17, 1966." After the sanction, the police prosecuted the appellant on January 16, 1968, as stated already in the 1st Class Magistrate's Court, Neemuch. The Magistrate after perusal of the case diary and other papers and after hearing the applicant, by his Order, dated September 23, 1968, was of the view that there was a prima facie case for framing a charge against the appellant under Section 25(a) of the Act and he accordingly framed the charge in respect of which a revision was field before the Additional Sessions Judge, Neemuch. This revision was rejected on December 19, 1968, and thereafter another revision was field in the High Court of Madhya Pradesh. Before the High Court, it appears the only contention urged was that the charge went beyond the sanction in that while the sanction specifically mentions that the applicant had been found in possession of the revolver at the Police Station, Neemuch on September 17, 1966, the charge speaks of his having been found in such possession "on or before September 17, 1966", which words are vague and not according to the sanction, as such the charge was bad. The High Court rejected this contention, holding that the words "on or before" would not render the charge illegal inasmuch as even on the date of recovery, the applicant could be said to be in possession of the revolver, and whether the charge is substantiated or not could be decided only after the Magistrate proceeds with the trial, records the evidence and determines the credibility of the witnesses thereon. The High Court also thought that the Additional Sessions Judge while rejecting the revision was of the view that before

the actual recovery of the revolver the appellant was in possession at some point of time and he was in constructive possession thereof on the date of its recovery. In these circumstances, it saw no illegality or impropriety in framing the charge and accordingly dismissed the revision.

3. Before us the learned advocate for the appellant contends that the High Court has palpably misconstrued the case of Golak Chand v. The King (75 IA 30 : AIR 1948 PC 82.) a case where it was held that a charge cannot go beyond the scope of the sanction, (2) that admittedly as the revolver was seized from Chhaganlal from Karoonda in the State of Rajasthan, the Court at Neemuch in Madhya Pradesh has no jurisdiction to try the case against the appellant who was a resident of Neemuch in the State of Madhya Pradesh, and (3) that it was Miroo who is alleged to have handed over the pistol to Chhaganlal after receiving it from the accused, which would show that the revolver was not in the constructive possession of the appellant on September 17, 1966.

4. The main question in this case is whether on the facts alleged if true and at this stage nothing can be said about the truth or otherwise of that allegation, the appellant can be said to be in possession of the revolver for being charged with an offence under Section 25(a) of the Act. Section 25(a) insofar as it is relevant states :

> "whoever acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3..... shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both".

5. What is meant by possession in the context of this section ? It is that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15 of that Act. The word 'control' under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises the power to obtain possession thereof when he so intends ? If the meaning to be given to the word "possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal the appellant could have at any time got back the physical possession of the revolver through Miroo. The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime some one conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet

again if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of it will be that of the owner. The concept of possession is not easy to comprehend as writers of Jurisprudence have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will me and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words 'on or before' were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word 'on or before' might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. Form a reference of Form XXVIII of schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he 'on or about'..... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read 'on or about' instead of 'on or before' which we accordingly order.

6. Once we hold that the charge is not defective, it cannot be said that it travels beyond the sanction accorded by the District Magistrate under Section 39 of the Arms Act as both of them are in similar terms in that the sanction also refers to the appellant having been allegedly found in possession of and having under his control one revolver without a valid licence at Neemuch police station on September 17, 1966. The decision of the Privy Council in Golak Chand's case (supra) is inapplicable to the facts and circumstances of this case. What the Privy Council was considering was a prosecution under Clause 18(2) of the Cotton Cloth and Yarn Control Order, 1943 for which sanction to prosecute under Clause 23 was required. The sanction did not set out the facts constituting the offence nor did the prosecution prove by extraneous evidence that the necessary facts required for granting sanction were placed before the sanctioning authority. The sanction merely mentioned the name of the persons to be charged and the provision of the Control Order under which they were to be prosecuted. It appears that cases under Section 195 of the Criminal Procedure Code were cited before the Board which, however, as observed by the Lordships do not lay down any principle inconsistent with the views expressed by them and as the sections of the Code are expressed in language different from that used in Clause 23 of the Control Order and are directed to different objects, it was thought that no useful purpose will be served by an examination of those cases. This Court held in Madan Mohan V. State of Uttar Pradesh (AIR 1954 Sc 637 : 1954 Cr LJ 1656.), following the Privy Council case in Golak Chand that where facts do not appear on the face of the latter sanctioning prosecution, it is incumbent upon the prosecution to prove by other

evidence that the material facts constituting the offence were placed before the sanctioning authority. Under the Arms Act all that is required for sanction under Section 39 is, that the person to be prosecuted was found to be in possession of the firearm, the date or dates on which he was so found in possession and the possession of the firearm was without a valid licence. As all the elements are contained in the sanction in this case, it is not an illegal sanction nor can it be said that the charge travels beyond that sanction.

7. It is further contended as already indicated that the Court at Neemuch has no jurisdiction to try the case in view of the fact that the revolver was recovered at Karoonda in Rajasthan. Apart from the question whether the possession of the revolver by the appellant is deemed to be at the place where he resided or whether it is a case covered by the provisions of Section 182 of the Criminal Procedure Code which is contained in Chapter XV dealing with places of enquiry and trial, we do not think that this contention can be allowed to be raised before us because no such objection was urged before the High Court in revision. Even in the application for a certificate under Article 134(1)(c) of the Constitution, the appellant did not urge that any such objections were urged on his behalf before the High Court and these were not considered. In that petition, five grounds were said to have been raised before the Magistrate and the Additional Sessions judge, one of which was regarding the jurisdiction of Neemuch Court to take cognizance of the case. The complaint in respect of these grounds was that while all of them were taken and urged before the Magistrate and the Additional Sessions Judge, they have not been fully and properly considered. No similar allegation was made insofar as the High Court was concerned though it was said that the Court at Neemuch in Madhya Pradesh would have no jurisdiction to try the offence. As this objection was not urged we cannot permit any such contention to be raised before us.

8. As the third contention raised before us namely that since on the prosecution case Miroo had handed over the revolver to Chhaganlal after receiving it from the accused, it cannot be said to have been in constructive possession of the appellant, is dependent on the evidence to be adduced at his trial, the learned advocate for the appellant did not press this ground.

9. In the view we have taken except for the direction that the charge be amended by the substitution of the words "on or before" by the words "on or about," this appeal is dismissed.

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