Mahendra Singh

Vs

State of West Bengal

Criminal Appeal No. 3 of 1970

(I.D. Dua, K.K. Mathew JJ)

24.04.1973

JUDGMENT

DUA, J. –

1. This appeal by special leave is directed against the order of summary dismissal of the appellants appeal by the High Court of Calcutta from the judgment and order of a learned Additional Sessions Judge, Asansol, dated June 18, 1969, convicting the appellant for the offences under Section 25(1)(a) and 27 of the Arms Act, 1959.

2. According to the prosecution case, on receipt of secret information, inspector Kali Prasanna Chaudhary of Detective Department, along with Circle Inspector, S. L. Routh S. I. K. D. Chakravarty, officer-in-charge of Hirapur police station and S. I. K. D. Chatterjee, Town Sub-Inspector of Asansol and some constables searched the appellants house on May 14, 1968, between 6.40 a.m. and 9.00 a.m. in the presence of some other witnesses. In the central room of the house there was an almirah of which the key was produced by the appellant and handed over to Inspector Kaliprasann Chaudhary (P.W. 1). The almirah was opened with the said key where in was found a bag containing seven 12 bore live cartridges, seven 410 bore live cartridges, nine rifle ammunition and one 12 bore fired cartridge case. There was also found a gun folded into two parts under a bundle of clothes on the lowest shelf. The appellant could not produce ana licence or permit for the possession of the gun and the cartridges. As a result of this recovery the appellant was arrested and challaned. He was duly committed by a magistrate to the court of Sessions. The principal question which fell for decision at his trial was whether it could be said that he was in possession of the articles found from the almirah, as contemplated by Section 25 of the Arms Act. After discussing the evidence and the legal position on the question of presumption of conscious possession in circumstances like the present, the learned Additional Sessions Judge came to the conclusions that these articles were in the appellants conscious possession. No licence or permit for these articles having been produced, the appellant was convicted both under Section 25(1)(a) and under Section 27 of the Arms Act. Under Section 27 of separate was considered necessary but under 25(1)(a) he was sentenced to rigorous imprisonment for two years.

3. It may incidentally be mentioned that in the trial Court on behalf of the appellant the legality of the investigation into the offence in question was also assailed, it being further contended that the S. I. K. D. Chakravarty, Officer-in-Charge of Hirapur police station was not empowered to investigate the case. As these questions are not agitated in this Court, we need say nothing on these points.

4. Against his conviction the appellant appealed to the High Court under Section 410, Cr. P.C. but this appeal was dismissed summarily on June 24, 1969, without indicating any reasons in support of

the order of summary dismissal.

5. Before us on behalf of the appellant it was contended that the order of summary dismissal by the High Court is contrary to the consistent view taken by this Court in numerous decisions where it has been firmly laid down that if an appeal raises arguable points of fact or law, then, it is undesirable and improper to dismiss it summarily without indicating, at least broadly, the reasons for such dismissal. In this case, according to the submission, the question of the conscious possession of the article, on the facts and circumstances of this case, was of considerable importance and it required and it required scrutiny of the evidence on the record. The appeal also raised some other question relating to the alleged infirmities in the search conducted during the investigation. Indeed according to the appellants counsel, there were nearly ten grounds of appeal in the memorandum which suggest that the question of the conscious possession of these articles clearly required a closer scrutiny of the evidence in the case.

6. In our view, there is force in the appellants contention. Beginning with the decision in Mushtak Hussein v. The State of Bombay, (1953 SCR 809 : AIR 1953 SC 282 : 1953 Cr LJ 1127) this Court has, in numerous cases, emphasised the extreme desirability of indicating, however broadly the reasons which prevail with the High Court in dismissing summarily an appeal in which questions of fact or law are raised, which do not seem to be unarguable or insubstantial. This, however, does not mean that the statute does not empower the High Court to dismiss an appeal in limine where in its opinion there is no substance in the appeal. The latest decision of this Court was given on March 13, 1973, in Mustaq Ahmed Mohammed Hussain and Mukhtar Hussain Ali Hussain v. The State of Gujarat ((1973) 1 SCC 702 : 1973 SCC (Cri) 590) in which some of the previous decisions of this court on this point have been digested. In arguable cases not only would the reasons recorded by the High Court be helpful to this Court in better understanding and appreciating the High Court's line of approach, but it would also serve to assure the accused that the arguable points in his appeal were properly argued and duly considered by the High Court. This assurance cannot be considered to be without importance and value.

7. The question, however, arises whether it is desirable and necessary in the larger interest of justice to send the present case back to the High Court for re-decision or it would be more conducive to the cause of justice that we ourselves examine the evidence and dispose of the appeal finally without further prolonging the proceedings against the appellant. It may be pointed out that the recovery of the articles in question was effected as for back as May, 1968, and the appellants conviction by the trial court is dated June 16, 1969. The High Court dismissed his appeal on June 24, 1969, and this Court granted special leave on January 8, 1970, when the appellant was released on bail. More than 3 years have now elapsed since the grant of special leave and the appellant's release on bail. We consider it would be highly unfair and unjust to the appellant to prolong the uncertainty of the final fate of this case by sending it back to the High Court for final disposal of the appeal after re-hearing. We have, therefore, undertaken to examine the evidence ourselves because that would guarantee speedy disposal of the case against the appellant. We may in this connection point out that undue delay in the final disposal of criminal cases tends, to some extent, to defeat the very purpose of criminal justice. Speedy disposal of criminal cases for commission of offences promote confidence of the society in the administration of criminal justice which is essential for sustaining the faith of the law abiding members of the society in the effectiveness of the rule of law. It also saves the accused from avoidable harassment inherent in unreasonably prolonged trials and appeals.

8. After having been taken through the evidence, we find that the testimony of K. P. Choudhary, P.W. 1 that the appellant had produced the key of the almirah in question and handed it over to the

witness who opened the almirah with that key is trust-worthy and no infirmity is found in his evidence. The evidence of Dharamdas Thakur, P.W. 2, fully supports the evidence of P.W. 1 on this point. So does the evidence of Santosh Lal Routh, P.W. 4. No doubt P.W. 1 and P.W. 4 are police officers, but P.W. 3 is an employee of the Indian Iron and Steel Company Ltd. The appellant worked in the department of P.W. 2. Now once it is held that the appellant had produced the key of the almirah the presumption arises that the arms found in that almirah were in his possession. No doubt there were certain belonging to women, but that is immaterial. It is not the appellants case that this key used to be taken by the other members of his family who used to palace their articles in this almirah without the appellants knowledge and that anyone of them might, therefore, have placed the arms in question in that almirah without his knowledge. In fact, the appellant has on the other hand completely denied the recovery of these articles from the almirah. His plea is not wholly irrelevant and can certainly be taken into consideration.

9. On the evidence on the record, therefore, it is not possible to hold that the existence of the arms in the almirah were without the appellants knowledge or that his possession of the arms was unconscious. His conviction under Section 25(1)(a) of the Arms Act, 1959, is therefore, fully justified. It is, however, difficult to sustain his conviction under Section 27 of the Arms Act, There is no evidence to support the offence under that section and indeed the trial Court has convicted him without properly applying its mind to the ingredients of that offence. The judgment of the trial Court seems to suggest that mere possession of the arms would also constitute of an offence under Section 27 of the Arms Act. This view is clearly not correct. But since no separate sentence was imposed under Section 27, it is unnecessary to say anything more about it than that the conviction under Section 27 must be quashed.

10. The question, however, arises as to what sentence in the circumstances of the case would meet the ends of justice. As already observed, the offence was committed in May, 1968, and the appellant was convicted in June, 1969. We are now in April, 1973. The possession of the arms in question has not been shown to be inspired by any sinister purpose. There is no evidence of any undesirable antecedents of the appellant, not is there any suggestion that the arms were likely to be used for some anti-social purpose. Their possession by the appellant might well have been intended to be utilized for the purpose of self-defence, though undoubtedly the possession was without a proper licence. Considering all the relevant circumstances of the case, we feel that it would meet the ends of justice if the sentence of imprisonment is reduced to that already undergone and a sentence of fine of Rs. 500/- is in addition on the appellant and in default of payment of fine, the appellant is directed to serve a sentence of rigorous imprisonment for one month. We order accordingly.

11. The appeal suceeds in part to the extent just stated.

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