

Rajinder Singh

Vs

State (Delhi Administration)

Criminal Appeal No. 278 of 1984

(Ranganath Misra, M. M. Dutt JJ)

15.12.1987

ORDER

1. This appeal is by special leave and is directed against the judgment of the Delhi High Court reversing the acquittal and convicting the appellant under Section 27 of the Arms Act. In the night of December 8/9, 1977, the appellant was found to be in possession of 18 1/2 kilograms of charas and a loaded pistol and was prosecuted for offences under Section 61 of the Punjab Excise Act and Section 27 of the Arms Act. The charas and the fire-arm which were said to have been recovered from his possession were seized. The trial Court acquitted the appellant of both the charges when it found that the seized article was not charas but turned out to be agarbattis. It also found that though the offences under the Excise Act and the Arms Act were alleged to have taken place at one point of time, the prosecution for the excise case was contemporaneous while the first information report relating to the recovery of the fire-arm was lodged 36 days after and there was no explanation as to why initiation of the two prosecutions was bifurcated in the manner indicated above. The respondent carried an appeal against the acquittal in relation to the offence under the Arms Act but did not challenge the acquittal under the Punjab Excise Act. The High Court looked into the two grounds referred to above but so far as the question of delay in launching the prosecution was concerned it was satisfied by recording a finding that the delayed first information report was not vitiated by mala fides. So far as the other question is concerned, it came to hold that the prosecution had satisfactorily established its case regarding the recovery of the fire-arm and acquittal in the excise offence did not affect the rest of the prosecution case. On reversing the judgment of the acquittal as already said the appellant was convicted under Section 27 of the Arms Act.

2. Learned counsel appearing for the appellant has reiterated the two contentions. We find it difficult to accept the basis of reversing the acquittal. It is not disputed that the two offences were committed at the same time when during the night of December 8/9, 1977, the seizure was made. There is absolutely no explanation as to why and under what circumstances the two prosecutions were separately launched. Ordinarily since it was one occurrence giving rise to two offences, there could have been a common first information report. There is no explanation as to why the two offences are bifurcated and even if for some reason not known existed for bifurcation, there is no explanation as to why first information report relating to Arms Act offence was made 36 days after. The defence version was that nothing of the type alleged happened and when the appellant had objected to an instance of police excess, he was implicated in these false charges. In view of the fact that the prosecutor had chosen not to challenge the acquittal in regard to the offence under the Excise Act offence (in a situation which is full of suspicion because while charas is alleged to have been seized and stored, agarbattis have been found), we find it difficult to accept the conduct of the prosecution. The High Court obviously over looked these aspects and the consequences to which these aspects should reasonably lead while reversing the acquittal. Ordinarily, all the doubts that arose in the case

should have been resolved in favour of the accused and the High Court appears to have condoned the lapses of the prosecution and convicted the appellant after reversing the acquittal. The appeal is allowed. The conviction and sentence are set aside and the bail bonds are cancelled.

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