

Jaspal Singh

Vs

State of Punjab

Criminal Appeal No. 686 of 1998

(G.T. Nanavati, S.P. Kurdukar JJ)

24.09.1998

JUDGMENT

NANAVATI, J. –

1. The appellant has been convicted under Section 25 of the Arms Act, 1959 and Section 5 of the TADA Act, 1987 as he was found in possession of one DBBL gun .12 bore and five live cartridges on 17-3-1992/18-3-1992. The trial court relying upon the evidence of ASI Balbir Singh and PW 4 Man Singh who were the members of the police party held that it was proved by the prosecution that the appellant was in possession of those articles. The trial court further held that as the gun was found loaded, it can be presumed that it was in working order. Taking this view, it convicted the appellant, as stated above.

2. Admittedly, no evidence was led by the prosecution to prove that the gun was in working condition and that the cartridge which were found from the person of the appellant were live cartridges. Neither ASI Balbir Singh had stated so nor was any report from an expert obtained to establish that the gun was in working condition and that five cartridges were live. What was found in the gun were two empties and not live cartridges and, therefore, it was not proper to presume that it was in working condition. In the absence of any evidence to that effect, the conviction of the appellant under both these aforesaid sections cannot be upheld. We, therefore, allow this appeal set aside the judgment and order passed by the Additional Judge, Designated Court, Sangrur, in Special Sessions Case No. 55 of 1992 and acquit the appellant. He is ordered to be released forthwith if his presence is not required in jail in connection with some other case.