Mohinder Singh

Vs

State of Punjab

Criminal Appeal No. 568 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 Terrorist and Disruptive Activities (Prevention) Act, 1987 by the Court of Additional District Judge, Designated Court, Sangrur. What has been held proved against the appellant is that he was found in possession of one Sten gun bearing No. 13303 and two magazines containing in all 12 live cartridges. The Designated Court relying upon the evidence of Inspector Gurmel Singh, PW 2 and ASI Amrik Singh, PW 3 held that the appellant was found in possession of that Sten gun and 12 live cartridges. The Designated Court also relied upon the evidence of PW 4 Ram Prakash and held that the said Sten gun was in working condition and that the said cartridges were live.

2. What was contended by the learned counsel for the appellant was that the appellant could not have been tried again for possession of the Sten gun and 12 live cartridges as in Special Sessions Case No. 5 of 1995 when he was tried along with other accused, the question of possession of Sten gun was also considered and the prosecution evidence in that behalf was not believed. In our opinion, this contention is thoroughly misconceived. In Sessions Case No. 5 of 1995, the appellant along with 4 other accused was tried for the offences punishable under Sections 399 and 402 IPC and Section 3 of the TADA Act. The appellant was not tried in that case for possession of firearms without a valid licence. He was also not tried for the offences punishable under Section 5 of the TADA Act. It, therefore, cannot be said that the appellant was tried earlier for the same offences and therefore he could not have been tried again. In the trial for the offences punishable under Sections 399 and 402 IPC and Section 3 of the TADA Act, what was disbelieved by the trial court was that the accused had collected at Kotah with an intention to commit dacoities and that they were apprehended before they could achieve their object. The trial was for different offences and, therefore, it was open to the Designated Court trying Special Sessions Case No. 5 of 1995 to decide the same on the basis of evidence led by the prosecution in that case.

3. It was also submitted by the learned counsel that the offences punishable under Section 25 of the Arms Act and Section 5 of the TADA Act could have been tried along with offences punishable under Sections 399 and 402 IPC and Section 3 of the TADA Act. In support of his submission, he relied upon Section 220 of the Criminal Procedure Code. What is overlooked by the learned counsel is that it is an enabling provision which permits the court to try more than one offence in one trial. The court may or may not try all the offences together in one trial. It cannot be said that by trying separately, the Designated Court committed any illegality.

4. It was next contended that the prosecution had not led any evidence to prove that the Sten gun was deposited in the Malkhana and that it was sent therefrom to the armourer after making proper entries in the register kept in the Malkhana for that purpose. He also submitted that there was no evidence to prove that the Sten gun and the cartridges that were seized by the investigating officer were the same as those examined by the armourer. In this, both the investigating officer and the armourer were examined and both of them identified the weapon and the cartridges in the Court. The weapon had a number written on it. Therefore, there was no scope for raising any doubt regarding the identity of the weapon. Even in the absence of any evidence regarding custody of the weapon and now it was dealt with after seizure, it can be said that the weapon as the same. It was found in working condition by the armourer. The cartridges were also found live by him.

5. It was lastly contended by the learned counsel that the accused had raised a specific defence in this case and therefore the evidence of the defence witnesses should have been accepted. The defence was that the appellant was taken into custody by the police 15 days before the date of the incident and that the complaint in that behalf was made to the Panchayat which had passed a resolution protesting against the detention of the appellant. This defence was considered by the Designated Court and was found not acceptable. There was no reason for the police to falsely involve the appellant. Moreover, the Designated Court has pointed out that no complaint was made to the police authorities by the Panchayat regarding alleged unlawful detention of the appellant. In our opinion, the Designated Court was justified in not accepting the defence raised by the appellant.

6. As we find no substance in any of the contentions raised in this appeal, it is dismissed.