

Before Sureshwar Thakur & N.S Shekhawat, JJ.

STATE OF HARYANA — Appellant

versus

SANDEEP AND ANOTHER— Respondents

CRM-A No. 2440 of 2019

August 31, 2022

Indian Penal Code, Sections 307,326,452 r/w 34, Arms Act, Section 27—Appeal by state on judgment of acquittal—Held—as per mandatory provisions of the Arms Act, no prosecution can be instituted against any person in respect of the offences under the Arms Act without the previous sanction of the district magistrate. In the present case no sanction had been taken nor any witness was examined to prove the fact—Present appeal dismissed.

Held, that neither any sanction order has been placed on record nor any witness has been examined to prove the said fact. Consequently, the benefit of the said illegality has to be extended to the respondents.

(Para 8)

Anmol Malik, DAG, Haryana, *for the applicant.*

N.S. SHEKHAWAT, J.

(1) State of Haryana has preferred the instant application, challenging the judgement of acquittal dated 24.10.2017, passed by the Court of Learned Additional Sessions Judge, Panipat, whereby respondents No.1 and 2 have been acquitted of the charge under Sections 307, 326, 452 read with Section 34 of IPC and Section 27 of the Arms Act.

(2) The FIR in the instant case was registered on the basis of a complaint moved by Jaivir Singh S/o Duli Chand, whereby, he alleged that at about 8.30 p.m. on 28.07.2016, he was returning to his house in his car. His neighbour Satbir Singh (since deceased), who had retired as SDO from Electricity Department and was inimical towards him, had parked his scooter in the middle of the street. The complainant asked Satbir to shift his scooter from there, but Satbir called his son Sandeep by stating that he had come and he should not be spared that day. Meanwhile, Sandeep, respondent No.1/accused and his neighbour Sandeep S/o Roshan came from the house of Satbir and rushed towards

them, while abusing them. The complainant was afraid and he entered his house. In the meantime, Shakuntla-respondent No.2/wife of Satbir also stated that no one should be spared. Both the boys entered his house and Sandeep, respondent No.1 was armed with a pistol. Sandeep S/o Roshan caught hold of him and respondent No.1 fired shot from his pistol and the bullet hit on his right thigh. His wife Neelam also came out on hearing the noise and the accused again fired shot at her with the intention to kill her and the bullet passed through her right thigh and injured her left thigh also. In the meantime, Satbir also reached and asked as to whether they had finished the job or not, on which both the boys replied jointly that they have fired at both of them. The complainant raised the noise to save him and Pardeep S/o Ram Sarup came at the spot, who saved the complainant side. Thereafter, three accused fled away from the spot alongwith respective weapons. Pardeep got the injured admitted in Prem Hospital, Panipat for medical treatment. With these broad allegations, the FIR was registered.

(3) That during the course of investigations, the police recorded the various statements of witnesses, acquainted with the facts of the case and also recovered pistol and five live cartridges from the accused. Thereafter, the trial formally commenced after framing of the charges. The prosecution examined as many as 14 witnesses in all to prove the case of prosecution and the evidence was closed by the Public Prosecutor. The accused did not lead any defence evidence.

(4) The trial Court considered the evidence led by the prosecution and held that the prosecution had not been able to substantiate the allegations levelled against the respondents and they were acquitted of the charges. Assailing the impugned judgment of acquittal, the State of Haryana has filed the instant application before this Court.

(5) We have heard learned State counsel for the Haryana and have considered the submissions made at par and perused the record.

(6) After considering the submissions made by the learned State counsel, we are not inclined to interfere in the impugned judgment passed by the Court of learned Additional Sessions Judge, Panipat.

(7) The criminal prosecution was initiated in the instant case on the basis of the statement made by Jaibir Singh-PW-4. He clearly stated that at about 8.30 p.m. on 28.07.2016, he alongwith his wife were present in their house and were sitting in the porch. Suddenly, they

heard the noise of some quarrel in the street and they stood up after hearing the noise. In the meantime, he and his wife sustained fire armed injuries on their person and he did not know as to who had fired shots on him. The assailants were unknown and they became perplexed and could not identify the assailants. He identified the accused present in the Court and stated that they did not fire at him. He was declared hostile at the request of the learned Public Prosecutor. He further stated that the complaint Ex.PD bears his signatures, but the police had obtained his signatures on blank papers. He denied the averments made in the complaint by him. Neemal w/o Jaibir Singh, PW-5, injured, also did not support the case of the prosecution. Pardeep S/o Ram Sarup, PW-6, who was an eye-witness, also did not support the case of prosecution. Apart from these three witnesses, rest of the witnesses were formal in nature and were official witnesses. Thus, there was no evidence on the file to show that respondents No.1 and 2 had fired shots at Jaibir and his wife-Neelam.

(8) Still further, the charge under Section 27 of the Arms Act was framed against Sandeep-respondent No.1. As per the mandatory provisions of the Arms Act, no prosecution can be instituted against any person in respect of the offences under the Act without the previous sanction of the District Magistrate. In the instant case, neither any sanction order has been placed on record nor any witness has been examined to prove the said fact. Consequently, the benefit of the said illegality has to be extended to the respondents.

(9) In the light of the above referred facts, there is no substance in the arguments raised by the learned State counsel. The material witnesses of the prosecution have turned hostile and chose not to support the case of the prosecution, while appearing in the witness-box.

(10) In view of the above, it is concluded that no interfere is required by this Court and the impugned judgment of acquittal passed by Learned Additional Sessions Judge, Panipat is upheld. Consequently, the application seeking leave to appeal is declined and the same is dismissed.

Dr. Payel Mehta