Thangjam Vs. Union Territory

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Court : Guwahati

Decided On : Feb-24-1958

Judge : J.N. Datta, J.C.

Appellant : Thangjam

Respondent : Union Territory

Judgement :

J.N. Datta, J.C.

1. The petitioner Thangjam Amu Singh, was tried for an offence punishable under Section 19(f) of the Indian Arms Act, for being found in possession of a part of a gun, and another a country-made gun and was convicted by the learned A. D. M., Manipur, on a plea of guilty and sentenced to undergo R. I. for 3 months.

2. Petitioner's appeal to the learned Sessions Judge, failed and he has come up to this Court with this petition for the exorcise of its revisional jurisdiction.

3. Ordinarily, as laid down in Section 412, Cr. P.C. when an; accused person is convicted on his own plea of guilty, no appeal lies except as to the extent or legality of the sentence. It however does not mean, that the appellant is prevented or debarred from showing that the plea was not really one or did not amount to a plea of guilty, and if the appellant can show that, then certainly the conviction would be liable to be set aside.

The revisional powers of a High Court, as is well settled, are even greater and are not in any way curtailed or circumscribed by Section 412, Cr. P. Code, and even when there is a plea of guilty it is open to the High Court to go into questions of fact as well as of law, and find out whether the conviction was right or not.

4. Besides an attempt to show that the plea was not really one of guilty, and the conviction was on that score bad, it was also pointed out that the conviction was bad in any case, as there was no legal sanction in accordance with the requirements of Section 29 of the Indian Arms Act, which is necessary before a prosecution under Section 19(f) can be launched. There can be no doubt that if a previous proper sanction was not obtained the whole trial would be vitiated and because of that the conviction would be liable to be set aside, even if it is based on a plea of guilty.

5. In the present case, the sanction is on record. It was given by the then A. D. M. (different from the A. D. M. who tried this case) and is endorsed on the application filed by the Police for the purpose. It was contended and in my opinion the contention must prevail, that the A. D. M, who gave the sanction did not have the powers of a District Magistrate for the purpose of Section 29 of the Indian Arms Act. The notification under Section 10(2) Cr. P. Code which was shown during the course of arguments, goes to show that the sanctioning A. D. M. was invested with the powers of a D. M. only under the Criminal Procedure Code, and not under any other law.

It is thus plain that he could not exercise the powers of a D. M. under Section 29 of the Indian Arms Act, and the sanction given by him must be ignored, with the result that the case was taken cognizance of without the sanction necessary under the said Section 29, for the initiation of proceedings and the whole trial having been thereby rendered illegal neither the conviction nor the sentence can be maintained see Yusuf Umar v. Emperor 41 Cr. LJ 707 1940 Sind 107 (A) and Prabhulal Ramlal v. Emperor AIR 1944 Nag 84 (B). In view of this position, it is not necessary to go into other points urged before me.

6. The result is that the conviction and sentence of tile petitioner are set aside, and he is discharged. It might however be made plain, that it will be open to the

prosecution to institute fresh proceedings after obtaining a proper sanction, if so advised.