

The State Vs. Hussaln Mirdha and ors.

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Court : Guwahati

Decided On : Dec-05-1958

Judge : H. Deka and G. Mehrotra, JJ.

Appellant : The State

Respondent : Hussaln Mirdha and ors.

Judgement :

H. Deka, J.

1. This appeal is by the State Government against the order of acquittal passed by the Additional Sessions Judge, Lower Assam Districts on 19-3-56. Five accused persons were tried of an offence Under Section 19(f) of the Arms Act before the Court of Session and the learned Additional Judge found the charge against Hussain Mirdha not substantiated on facts. As regards the other four accused persons the learned Additional Judge found a case made out in respect of the charge Under Section 19(f) of the Arms Act, but since he was of the opinion that sanction for the prosecution was not given by a competent authority, he held the trial to be bad. and, as such acquit all the accused persons. Of these acquitted persons Ramprasad is dead. The State Government has, therefore, come up in appeal against the order of acquittal of Hussain Mirdha. Wazuddin. Mansur Ali and Kami Sikdar the surviving accused.

2. The case for the prosecution was that on 12-6-53 Nagiram Saharia, Officer in charge of the Tarabari Police Station got an information that some people were collecting at a place known as Barabhita within his jurisdiction, - for the purpose of committing dacoity and Nagiram Saharia on this information took two Assistant Sub-Inspectors of Police and ten Constables with him and started on a boat to apprehend the persons who had proceeded for the purpose of committing dacoity. When he reached Barbhita which lay at the mouth of a river known as Kukarjan. he found a boat lying anchored with some persons on board.

He then made a dash towards the boat and on reaching the same he with his whole party got into that boat when Kanu Sikdar is alleged to have aimed " a gun at the police party, but he was soon overpowered. Accused Wazuddin was trying to escape by swimming but he was chased and caught. Accused Ramprasad was also caught at the place near the boat. Accused Mansur stayed in the boat. The police party started a search of the boat in the presence of some outsiders and the accused persons. During the search the police recovered two guns and one barrel of a gun with nineteen live cartridges from the boat. All these articles were seized and Tarun Sarana Assistant Sub-Inspector prepared a seizure-list as asked by the Officer-in-Charge Nagiram Saharia.

The four accused persons were put under arrest and were taken to the thana along with the seized articles and the boat from where these articles were recovered. The boat belonged to Hussain Mirdha and it was alleged that he was seen at Barbhita in the early morning of 12-6-1953 coming out from the boat, but at the time the police searched the boat and recovered the guns and cartridges he was not there. He was, however, put under arrest few days later and was sent up in connection with this case for complicity in possessing arms and ammunition without licence. All the accused persons pleaded not guilty and their defence was that these articles were not recovered from their possession.

3. The learned Additional Sessions Judge discussed the evidence on the point and came to the finding that no case was made out, at least satisfactorily, against Hussain Mirdha. But against the other 1 four accused, he stated in the judgment that he was satisfied that the arms and ammunition in question were in conscious

possession of the four accused persons and he would have no hesitation in holding that Monsur, Wazuddin, Kanu Sikdar and Ramprasad could have been convicted of an offence Under Section 19 (f) of the Indian Arms Act. were not the prosecution defective because of want of sanction.

In this case Mr. Choudhary appearing for the State has pressed one point before us with emphasis and that is that the learned Additional Judge was wrong in holding that there was no proper sanction; for prosecution of the accused -persons as contemplated Under Section 29 of the Arms Act. In the circumstances of the case he did not press that Hussaift Mirdha could be convicted; but as to the other three surviving accused he pressed that they should be convicted under Section 19 (f) of the Arms Act and sentenced according to law.

4. Mr. Mohiuddin appearing for the accused persons has tried to show that the learned Additional Sessions Judge was justified in holding that there was no proper sanction for prosecuting the accused persons and that the order of acquittal was correct. Therefore, this is the main point that comes up for consideration in this case it being accepted almost as a matter of course that the learned Additional Judge was right in his findings as to facts.

5. Before proceeding to decide the point at issue, as to whether the sanction as given by the Additional Deputy Commissioner, Kamrup was legal B reproduce below the relevant portion of Section 29 of the Arms Act :

Sanction required to certain proceedings Under Section 19 Clause (f).- Where an offence punishable Under Section 19, Clause (f), has been committed within three months from the date on which this Act comes into force in any State xxxx

No proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district, or, in a presidency town, of the Commissioner of Police,

6. In this case the sanction for prosecution Under Section 19 (f) of the Arms Act was given by the Additional District Magistrate, Kamrup purporting to act undeie Section 10 (2) of the Criminal Procedure Code. Let me quote below the relevant

portion of Section 10, Criminal Procedure Code :

(1) In every district outside the presidency-towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

2. The State Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct.

Section 10 (2), Criminal Procedure Code as above-quoted distinctly shows that the State Government may appoint any Magistrate of the first class to be an Additional District Magistrate who will have the power or any of the powers of the District Magistrate under the Code, or any other law for the time being in force as the State Government may direct. In this case it is not disputed that the appointment of the Additional District Magistrate was made according to law and he was authorised to exercise such powers of the District Magistrate as came within the scope of Sub-section (2) of Section 10.

It lays down that the Additional District Magistrate so appointed could not only exercise the powers of the District Magistrate under the Criminal Procedure Code but also under any other law for the time being in force. It is also a fact that the Arms Act was a law in force at the time. But the question is whether the sanction as contemplated Under Section 29 of the Arms Act could be exercised by the Additional District Magistrate on the authority of the words 'under any other law' as occurring in Sub-section (2) of Section 10, Criminal Procedure Code.

7. It is difficult to find an exact authority on the proposition and on all fours with the facts of this case. Mr. Chowdhury however drew our attention to- an unreported case mentioned in A.I.R. 1955 NUC (Cal) 546 decided by Roxburgh and Blank JJ. (Pan-chu Gopal Ghosh v. The King Cri. App. No. 114 of 1948. It was held therein that sanction Under Section 29 of the Arms Act given by the Additional District Magistrate authorised Under Section 10 of the Criminal Procedure Code to exercise powers of the District Magistrate under any other law for the time being in force is a valid sanction, the District Magistrate authorised to give sanction not being a

persona designata. We have not got the advantage of acquainting ourselves with the discussion contained in the judgment.

But the view is clear to the effect that authorisation of the Additional District Magistrate Under Section 10 (2) of the Criminal Procedure Code was competent for the purpose of granting sanction Under Section 29 of the Arms Act. The important point is also mentioned in the note - namely whether the Magistrate of the District or the Deputy Commissioner is a persona designata under Section 29 of the Arms Act in which case nobody else except the District Magistrate would have been competent to grant the sanction under that Section.

Another case that has the nearest approach is the case of *Abdur Rahiman Kutty v. Emperor* A.I.R. 1937 Mad 637, and it was the decision of a Single Bench. There the point raised for consideration was whether an Additional District Magistrate could Under Section 10 (2), Criminal Procedure Code exercise the powers of the District Magistrate as conferred under Section 8 of the Child Marriage Restraint Act (1929) to try a case under that Act. The District Magistrate took cognizance of the case but transferred the case; to the Additional District Magistrate for trial, and it was contended that the District Magistrate could not do so, but he was bound to try the case himself even though the Additional District Magistrate was given Under Section 10 (2), Cr. P.C. all the powers of a District Magistrate.

In Section 8 of the Child Marriage Act it was laid down that notwithstanding anything contained in Section 190, Criminal Procedure Code, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall, take cognizance of or try any offence under this Act. On this basis it was argued that no other Magistrate except the District Magistrate was competent to take up the trial. But the view held by learned Judge was - that since in the above Section there was mention only of Section 190, Cr. P.C. and not of Section 10 (2), the operation of this Sub-section was kept intact, which implied that an Additional District Magistrate so authorised could exercise the powers of the District Magistrate for the purpose of Section 8, Child Marriage Restraint Act and the power of trial was not confined to the District Magistrate alone.

This decision was viewed with approval in the case of *Prabhulal Ramlal v. Emperor* A.I.R. 5944 Nag 84. There also the identical point came up for consideration, - namely as to whether the power that was exclusively exercisable by the District Magistrate under the Defence of India Act could be exercised by an Additional District Magistrate Under Section 10 (21), Criminal Procedure Code. This is a judgment of a Division Bench and the view held was that for the purpose of Defence of India Act, the District Magistrate was a *persona designata* and the power could be exercised by the District Magistrate alone on the basis of the authorisation of the State Government and that power in him could not be delegated either by legislation or otherwise to any other Magistrate excluding the District Magistrate.

There is another passage occurring in that judgment but lends support to the contention raised on behalf of the State Government that the words 'any other law' occurring in Section 10 (2), Cr. P., Code would apply to the provisions of the Arms Act and the sanction contemplated therein could be exercised by the Additional District Magistrate exercising his powers Under Section 10 (2), Criminal Procedure Code. The relevant passage runs as follows :

The word 'law' in 'any other law' occurring in Section 10 (2) is not meant to include an executive order but only legislative enactments, and rules, regulations or orders which have the force of law and consequently the District Magistrate, who acts for the Provincial Government under the powers conferred upon him by the Provincial Government by an executive order, cannot be regarded as acting under any 'law' as such

The Child Marriage Act case is distinguishable as the District Magistrate is to act under the provisions of that Act and not under any executive order.

8. We need not refer to the other cases cited by the learned Advocates which have no direct bearing on the point, but examine the provisions of the Indian Arms Act which we are bound to do for the purpose. The decision cited above would support the view that the Arms Act came within the range of 'any other law' in force. We are accordingly of opinion that the District Magistrate or the Magistrate of the District is not a *persona designata* for the purpose of exercising the powers for

granting sanction as contemplated Under Section 29, Arms Act, and the Additional District Magistrate was acting within his jurisdiction in exercising the powers to grant sanction which he did and is found as a fact.

9. We are, therefore, of opinion that the learned Additional Judge was wrong in holding that there was no proper sanction for the prosecution of the accused persons Under Section 19 (f) of the Arms Act and that the trial was bad. We hold that there was a valid sanction and on the basis of the findings arrived at by the learned Additional Judge, - with which we have no reasons to differ, - the three respondents (1) Mansur Ali, (2) Wajuddin and (3) Kami Sikdar should have been convicted Under Section 19 (f) of the Arms Act and punished thereunder.

10. We accordingly convict these three respondents Under Section 19 (f) of the Arms Act and sentence each of them to one year's rigorous imprisonment. They are directed to surrender and serve out the rest of the sentence. The order of acquittal in favour of Hussain Mirdha stands. The appeal is, therefore, allowed in part as mentioned above.

Mehrotra, J.

11. I agree.

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