

State Vs. Bhimsha Chanbasappa Kore

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Court : Mumbai

Decided On : Aug-18-1961

Reported in : AIR1962Bom188; (1962)64BOMLR24; ILR1962Bom129

Judge : Naik and ;Abhyankar, JJ.

Acts : Arms Act, 1878 - Sections 4, 10, 17, 19, 27 and 29; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 10(2)

Appeal No. : Criminal Appeal No. 542 of 1961

Appellant : State

Respondent : Bhimsha Chanbasappa Kore

Advocate for Pet/Ap. : C.C. Vaidya, Asstt. Govt. Pleader

Judgement :

Abhyankar, J.

(1) This appeal is filed by the State against the acquittal of the respondent Bhimsha Chanbasappa Kore by the Judicial Magistrate First Class, Court No. 1 Sholapur, in case No, 2669 of 1960 by his judgment dated 23-12-1960. The respondent was charged before the learned Magistrate with having committed a breach under section 19(f) of the Indian Arms Act, in that he was found in possession of muzzle-loading gun in field S.No. 328/3 without a licence. The

prosecution case was that the officer in charge of the police station at Valsang received information that a man in possession which is between the village Valasing and Chinaeneli. This was on 13-10-1960. On receipt of constable Pandurang More started to make inquiries. They went into the field and took with them two panchas, viz., Lalkhan and Bhonge, from a neighbouring land. They saw a man sitting below a mango tree and he had a gun in his hand resting on his knees. On seeing them, the man tried to get up but was asked not to move. The gun was taken from him under a panchanama and the man holding the gun was asked whether he had a licence to which he replied in the negative. Then a personal search was taken of the man and of a search of the pocket of his coat, one matchbox containing capes was found. He had also a cloth-bag and in that cloth-bag some pellets having gunpowder. It is alleged that the palm of the man holding the gun was blackened and smelt of gunpowder.

(2) The learned Magistrate accepted the evidence of the prosecution that the accused was found actually in possession of gun, as alleged, and that the gun was seized from the accused. There was no dispute that the gun was not covered by a licence and, therefore, the find of the gun without a licence with the accused, was held to be established. The offence being under the Arms Act, prosecution could only be launched after obtaining the sanction of the requisite authorities. The sanction can be given by the authorities mentioned in section 29 of the Arms Act. In this particular case, the sanction was given by the Additional District Magistrate, Sholapur, by his order dated 29-10-1960, and that sanction is Exh. 8 in this case. It was contended before the learned Magistrate of the District under the Arms Act and the sanction given by the Additional District Magistrate was invalid and improper. It appears that the learned Magistrate accepted this contention and holding that the prosecution was not launched after obtaining the necessary sanction, passed an order of acquittal of the accused on that ground. The state has filed this appeal challenging his order of the learned Magistrate.

(3) In support of the appeal, it has been contended by the learned Assistant Government Pleader that an Additional District Magistrate is as much competent as the District Magistrate to give sanction for prosecution of a person who the arms Act under S.29 of the Arms Act. It is pointed out that under Sec 10 (2) of the

Code of Criminal Procedure, an Additional District Magistrate who is duly appointed by a State Government is entitled to exercise all or any of the powers of a District Magistrate either under the Code of Criminal Procedure or force. Thus it is urged that the Additional District Magistrate in the instant case could exercise the power of the District Magistrate under Section 29 of the Arms Act.

(4) On the other hand, it is contended by Mr. Bhasme, learned Counsel appearing for the respondent, that the scheme of the Indian Arms Act would appear to be that the work 'District Magistrate' should bear a particular meaning defined in the rules. He has invited our attention to Rule 2 of the rules framed by the Central Government in exercise of the powers conferred under Ss. 4,10,17 and 27 of the Indian Arms Act. Rule 2 of these rules is as follows:

'2 Interpretation (1) In these rules, unless there is anything repugnant in the subject or context --

' District Magistrate ' includes, in the case of the suburbs of Calcutta, any District Magistrate as defined in Government of Bengal Notification, dated 21st September 1890, and Commissioner of Police Calcutta, and in cases where the Central Government so directs, in respect of any district or part thereof, an Additional District Magistrate, and in respect of the State of Andhra Pradesh and Jammu and Kashmir, an officer specially designated in this behalf by Government of the State concerned;.....

On the basis of this rule, it is urged that it is only those Additional District Magistrates, in respect of whom the Central Government has given a direction who are entitled to exercise the powers of a District Magistrate or Magistrate of the District as S. 29 says, to give sanction for prosecution under section 19(f) of the Arms Act. We find it difficult to accept this contention. The rules which have been framed by the Central Govt. in exercise of the powers given under different sections of the Arms Act. Among these rules is found the definition of 'District Magistrate' Under R. 2. Now, reference to Section 4/ or S. 10 of the Arms Act would show that no rule can be made under either of these Sections for interpretation of the word 'District Magistrate'. The only power which can be found for making rule of interpretation would be referable to the power to make a rule

under section 17 of the Arms Act. This power is given in the following terms:

17. The Central Government may from time to time, by notification in the official Gazette, make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any licence shall be granted and may by such rules among other matters etc'.

This power is given to the Central Government to make rule designate which shall be licensing authorities. In our opinion, Rule 2 which has been framed by the Central Government must be referable to the power under section 17 of the Arms Act and the rule of interpretation says that 'District Magistrate' shall include several authorities enumerated in that rule. It will also be seen that this rule-making power is given with respect to designation of the power and not for the purpose of sanctioning prosecutions. The authority enumerated in section 29 of the Arms Act, is Magistrate of the District in the mofussil and a Commissioner of Police in the presidency Towns, and there is no dispute that the Magistrate of the District means the District Magistrate, as understood under the Criminal Procedure Code. Once that the conclusion is reached, it is easy to see that any person who is, appointed as Additional District Magistrate by the State Government can exercise all or any of the powers of the District Magistrate, under sub-section (2) of section 10 of the Criminal Procedure Code and he would automatically have the power of a District Magistrate, under the code or under any other law. It is quite clear that the Additional District Magistrate would, therefore, have the same power as the District Magistrate under section 29 of the Arms Act. In our opinion, therefore, the learned Judicial Magistrate was in error in considering that the Additional District Magistrate had not the jurisdiction or authority to give sanction for prosecution of the respondent for breach of offence under section 19 (f) of the Arms Act.

(5) we, therefore, hold that the finding of the Magistrate that the accused was entitled to an acquittal because of want of a valid sanction is not tenable and is liable to be set aside. We may also observe that if the Magistrate found that there was any invalidity in the sanction which gave him jurisdiction or there was any infirmity in the initiation of proceedings for want of valid sanction, the power order of quashing the proceedings and not of acquittal or conviction of the accused did

not arise because the initiation of the proceedings itself was bad in law. To that extent also, the findings of acquittal recorded by the Magistrate on the ground that here was want of valid sanction is incorrect.

(6) (The rest of the judgment is not material for purposes of this report).

(7) DF/K.S.B.

(8) Accused convicted and sentenced.

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