Dhanpat Vs. State

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Court : Allahabad

Decided On : Jun-05-1959

Reported in : AIR1960All40

Judge : A.N. Mulla and ;B.N. Nigam, JJ.

Acts : Indian Arms Act, 1878 - Sections 19, 29 and 32; Evidence Act, 1872 - Sections 56 and 57(7)

Appeal No. : Criminal Appeal No. 539 of 1957

Appellant : Dhanpat

Respondent : State

Advocate for Def. : Addl. Government Adv.

Advocate for Pet/Ap. : R.C. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

A.N. Mulla, J.

1. Dhanpat appellant was convicted under Section 19(f) of the Anns Act and sentenced to eighteen months' rigorous imprisonment by the Additional Sessions Judge Barabanki. He and two others were prosecuted under Sections 399 and

402 I.P. C., but all the accused were acquitted on that charge.

2. Dhanpat came up in appeal and his appeal came before one of us. The counsel for the appellant contended that the prosecution failed to prove any valid sanction for the prosecution of the appellant under Section 19(f) of the Arms Act and so the appellant could not have been convicted under Section 19(f) of the Arms Act. He also in a hesitant way critised the findings of the trial court. So far as the merits of the case are concerned, the findings of the trial court are not assailable. There is enough evidence on the record of the case to prove that an unlicensed pistol with some catridges was found on the person of the appellant when he was arrested. On facts there was no force in this appeal, but in view of a conflict on the point of law raised in the case, this case was referred to a Divisional Bench of this court.

3. In order to appreciate the point of law, some facts may be stated. When the investigating agency framed a charge-sheet in this case it forwarded it to the District Magistrate, Barabanki to obtain his sanction and there is an endorsement on this charge-sheet which is as follows :

'Prosecution sanctioned'

and then there are some initials underneath this endorsement. This charge-sheet was exhibited in the court of the committing Magistrate but for some unknown reason it was not exhibited before the trial court. The counsel for the appellant contended that under the provisions of Section 29 of the Indian Arms Act, no proceedings could have been instituted against the appellant in respect of an offence under Section 19 Clause (f) of the Indian Arms Act without the previous sanction of the District Magistrate and as this sanction has not been prov-ed and there is also no indication that the initials underneath the endorsement are those of the District Magistrate, the requirements of law have not been fulfilled and the trial court had no jurisdiction to hear the case against the appellant under Section 19(f) of the Indian Arms Act and so the order of conviction passed against the appellant was without jurisdiction and should be held to be null and void.

4. On behalf of the State if was contended that no sanction was necessary for an offence committed in the Barabanki district and even if it is held that the sanction

has not been proved, it will not visiate the proceedings. Secondly, it was contended that if a sanction is held to be necessary, such a sanction was obtained in this case from the proper sanctioning authority and it was even exhibited in the court of the committing Magistrate-The failure to exhibit this sanction before the trial court docs not amount to instituting the proceedings without obtaining the previous sanction of the District Magistrate. Thirdly, it was contended that the charge sheet was a public document within the meaning of Section 74 Sub-clause (3) of the Indian Evidence Act and the Court can take judicial notice of this document under Section 57(7) of the same Act.

5. The following questions arise for determination in this case :

1. Was the obtaining of a sanction necessary before instating proceedings in this case?

2. Can the Court take judicial notice of this sanction under Section 57(7) of the Indian Evidence Act, even though it was not exhibited before the trial court.

6. On the first question I find myself in agreement with the contention advanced by the counsel Eor the appellant. In my opinion a sanction is necessary before a prosecution can be launched under Section 19(f) of the Arms Act. I will cite Section 29 of the Indian Arms Act (Act XI of 1878). It runs as follows :

'Where an offence punishable under Section 19 Clause (f), has been committed within three months from She date on which this Act comes into force in any State, district or place to which Section 32, Clause (2) of Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of India not being such a district, state or place, 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.'

A reading of Section 29 makes it clear that it has made a distinction between those States, districts and places to which Section 32 Clause (2) of Ac! XXXI of 1860 applies and to the rest of India. In the case of those States which fall in the first category, the rule of sanction was to he observed only upto three months from the

date on which the Indian Anns Act came into force there, It ceased to operate after this period of time was over.

7. I have now to consider whether the District of Barabanki comes under the first part of Section 29 or the second part. The counsel for the State has relied on the decision in Amir Ahmad v. Emperor : AIR1926 All143 . IS was held by Daniels J. in this case that the sanction of the District Magistrate was not necessary for the prosecution of an offender in any district in the North-Western Provinces and he included Oudh in these Provinces. Reliance was placed upon a notification issued by the Governor General dated 21-12-1858 extending the provisions of Sections 1, 2 and 5 of Act XXVIII of 1857 to the whole of the North-Western Provinces. The notification runs as follows :

'21st December, 1858.-No. 5336. The Right Hon'ble Governor-General has been pleased to extend the provisions of Sections 1, 2 and 5, Act XXVIII 1857 to the North-Western Provinces of the Bengal Presidency.

His Lordship having resolved on disarming such parts of those Provinces as lie to the north of the rivers Jumna and Ganges, has further been pleased, under Section 24, Act XXVIII of 1857, to authorise a general search and seizure of arms by the Magistrates and Collectors within the tract above specified. The Magistrate and Collector may delegate the same authority to any officer of his establishment, of rank not lower than a Jamadar.'

8. Amir Ahmad's case : AIR1926 All143 was followed by two Divisional Bench decisions of this Court. These decisions are:

1. Emperor v. Abdul Ghafur : AIR1929 All68 and

2. Emperor v. Angad : AIR1929 All69 .

Dalai J. observed in the latter decision that the district of Aligarh was an area to which Section 32 Clause (2) of Act XXXI of 1860 applied. Recently this view was again expressed by a learned Judge of this Court in Vikram Singh v. The State, 1954 All LJ 587. These Allahabad decisions however can be distinguished for they do not relate to the districts of Oudh, but relate to those districts which were

undisputedly included in the North-Western Provinces. The question before us is whether the district of Barabanki is a place to which Section 32(2) of Act XXXI of 1860 applied at the date when the Arms Act (Act XI of 1878) came into force.

9. Section 32 of Act XXXI of 1860 runs as follows :

'Clause 1. It shall be lawful for the Governor-General of India in Council or for the Executive Government of any Presidency or for any Lieutenant Governor, or with the sanction of the Governor-General in Council for the Chief Commissioner or Commissioner of any Province, District or place subject to their administration respectively, whenever it shall appear necessary for the public safety, to order that any Province, District, or place shall be disarmed.

Clause 2. In every such Province, District, or place as well as in any Province, District, or place in which an order for a general search for arms has been issued and is still in operation under Act XXVIII of 1857, it shall not be lawful for any person to have in his possession any arms of the description mentioned in Section VI of this Act, or any percussion caps, sulphur, gunpowder, or other ammunition without a license.'

It is clear from the language of Clause 2 that the necessity of procuring a sanction for prosecuting on offence under Section 19(f), Arms Act can only be dispensed with if the district where the offence is committed is one where an order for a general search for arms was made either under Act XXVIII of 1857, and this order continued to be operative, or an order for disarmament of that district was made under Clause 1 of Sec, 32 cited above. So far as the second alternative is concerned, it is conced-ed by the State that no such order exists. We are thus left only with the first alternative. In my opinion the notification No. 5336 cited above by its terminology does not cover and was not intended to cover the districts in Oudh.

It related to only that part of the North-Western Provinces which was in the Bengal Presidency, and not to Oudh. It is true that Oudh was also disarmed but Oudh was never a part of the Bengal Presidency nor was the disarmament of Ondh made either under Act XXVIII of 1857 or Act XXXI of 1860. This question has been fully

dealt with bv a Divisional Bench of the Oudh Chief Court in Pnkhai v. Emperor AIR 1948 Oudh 187. I need not repeat the reasons given by the learned Judges in that case for coming to the conclusion that the Districts of Oudh are not covered by the notification No. 5336. Amir Ahmad's casep : AIR1926 All143 was considered but was not followed.

10. An earlier decision given by Lindsay J. in Pohap Singh v. Emperor, Criminal Revision Application No. 17 of 1911, decided on 14-5-1912 may be taken to be almost conclusive on the point. In this case Pohap Singh was prosecuted under Section 19(f) Arms Act without the sanction required by Section 29 of the said Act. At the preliminary stage of hearing Lindsay J. directed the District Magistrate of Hardoi to report whether the sanction was procured or not. The District Magistrate reported that as the search was conducted on a search warrant issued by him, no further sanction was considered necessary. A paragraph in his report is important and it runs as follows :

'It may also be added that so far as Oudh is concerned cases under Section 19(f) of the Arjns Act would seem to be governed by the first portion of Section 29 which has ceased to be operative since the expiry of 3 months after the Act of 1878 came into force. In support of this view attention is invited to the proclamation and orders of the Chief Commissioner issued in 1858 and subsequent years for disarmament of Oudh, an operation which was still in progress at the end of 1860 and was presumably carried on under the powers conferred successively by Act XXVIII of 1857 and Act XXXI of 1860 as referred to in Section 32 (Clause 2) of the hitter Act.'

Lindsay J. in his decision observed :

'The District Magistrate however referred to certain proclamations by reason of which he argues that the case was one in which no sanction was required, that is to say he has attempted to show that Hardoi was a district to which Section 32 Clause (2) of Act XXXI of 1860 applied at the date when the present Anns Act became law. I gave the Government Pleader time to examine into the matter and to find out any notification or proclamation which might assist in determining this question. I cannot say that what has been brought to my notice since has made

the question clear.

There is no doubt that about the year 1858 a general proclamation was issued for the disarmament of Oudh. I have read a copy of that proclamation which has been produced before me by the Government Pleader. It does not refer of course to Act XXXI of 1860 an Act of subsequent date; nor does it refer to the earlier Arms Act (XXVIII; of 1857). It is not clear therefore whether this proclamation purported to issue under the provisions of any Act then in force and applicable to Oudh or whether it was merely a proclamation issued as a matter of executive precaution or in connection with the military operations still pending in Oudh at the time.'

The learned Judge went on and held :

'Until it, is shown that an order specifically made under the provisions of Section 32 Clause (1) was promulgated in the Hardoi District I do not think it can be said strictly in law that at the time when the present Arms Act (XI of 1878) came into force Section 32 (Clause 2) of Act XXXI of 1860 did apply on that date to the District of Hardoi.'

After this decision the Government of the United Provinces issued circular letter to all the Deputy Commissioners in Oudh and issued a direction that no prosecution should be launched under Section 19(f) Arms Act without scenting a specific sanction (G. O. No. 749/VI-841 of 1912 dated 28-2-1913). If the Government of the United Provinces had felt that notification No. 5336 cited above was applicable to Oudh, it would have placed it before the Court in a subsequent case and would not have issued the circular letter. It, therefore, seems to me that Oudh cannot be included in the North-Western Provinces of the Bengal Presidency as held by Daniels J. in Amir Ahmad's case 24 All LJ 30 : (AIR 1926 All 143) and I, therefore, hold that the procurement o a sanction under the second part of Section 29 is necessary for a prosecution under Section 19(f), Arms Act in the Districts of Oudh.

11. Even if I had agreed with the view expressed by Daniels J. in Amir Ahmad's case : AIR1926 All143 I would have found it extremely difficult to accent the contention that a prosecution under Section 19(f) Arms Act can be launched without the procurement of the necessary sanction. The rule of sanction as

embodied in Section 29 Arms Act consists o two parts. The second part is the general rule and the first part is an exception.

While exceptions are to be found in the ap-plication of various penal provisions, it cannot be disputed that exceptions create a discrimination and as soon as the question of discrimination arises the Courts of law have to see whether the discrimination created is based on a reasonable and understandable basis or not. This has become necessary after the enactment of the Consti ution of India. In order to understand the implications of a statute it is always profitable to find out its purpose in its historical background.

12. The Anns Act was enacted in the year 1878 only about 21 years after the Mutiny which is now accepted to be the first concerted effort made by the Indian nationals to shake off foreign domination. The ostensible purpose which is quite apparent was to emasculate Indians and to make them incapable of offering any resistance to the alien rulers. On the pretext of securing peace and security large areas which had offered some resistance earlier were to be completely disarmed.

A distinction was therefore made between those areas which had proved to be troublesome in Ithe past or where there were still some groups which were mentally unsubdued and which may become a potential danger in future, and the other areas which were comparatively more subdued, More drastic steps were, therefore, considered necessary for those areas which fell in the first category. These areas were to be completely disarmed while a general seizure of arms in the other areas which were less turbulent was not necessary.

The period of grace given to the areas which were to be disarmed by making a provision that upto three months after the enforcement of this Act sanction would be necessary was really an inducement offered to the residents of these areas to surrender unlicensed arms. It was thought that if the possession of unlicensed arms would itself not make the possessors liable to criminal prosecution these possessors might be tempted to disclose their arms and surrender them. Still as these areas were considered to be disturbed areas, this leniency was to be extended only upto a period of three months.

On the other hand in those parts of the country which were considered comparatively peaceful and subdued there was no necessity to offer any inducement to the residents to surrender unlicensed arms. It was perhaps for this reason that this classification was made. It, therefore, appears that it was pimarily the needs of an alien government to consolidate its sway over its subjects which prompted this discrimination. Whether this discrimination should be maintained to-day or not is another question.

This question is not before us to-day but I am inclined to the view that no reasonable basis for continuing this discrimination exists. Section 29 of the Indian Arms Act was enacted before the coming into force of the Constitution of India and, therefore the question of inequality of treatment was not before the legislature. But after, the passing of the Constitution of India, every law is to be tested on the basis of the provisions of the Constitution and if it does not fulfil the requirements of the Constitution, it will have to be held as ultra vires of the Constitution to the extent that it violates the fundamental rights given to the citizens of the country.

It is inconceivable at the present day to find any rational basis for the classification made in Section 29 of the Indian Arms Act. It cannot be contended with any reason behind it that the districts north of the rivers Jamuna and Canges are more turbulen than the districts south of these rivers. As the general rule is a salutary rule of law and it is the first part of Section 29 alone which creates an unjustifiable classification the general rule should prevail and the exception should be ignored.

13. I, therefore, feel that the first part of Section 29 of the Indian Arms Act is hit by Article 14 of the Constitution of India, but it is not necessary for me to decide this question in this case.

14. There is another aspect which would also indicate that the rule of sanction is salutary and it must be followed. Section 29 of the Indian Arms Act is not a mere formality and it is a salutary protection against (inexpedient prosecutions which may not be desirable in the public interest. The legislature by enacting Section 29 intended to convey that the prosecution of persons found with unlicensed fire-arms was a matter of discretion with the District authorities and the act of possessing

such fire-arms did not by itself make a person liable to criminal prosecution by the police, The resons for making this safeguard can well be understood.

There are certain penal statutes in which the legislature makes an objective approach to an offence and there are other offences in which a subjective approach is made. Where the offence is of such an anti-social character that its commission by itself amounts to a danger to the community, an objective approach is made. Instances of this objective approach are the enactments which brondly sneaking rome under the head 'social legislation' or which are enacted to protect the health or other basic rights of the community at large.

In such cases the plea that an accused did not intend to commit an offence and mens rea did not exist is seldom open to an offender. But the possession of unlicensed fire-arms by itself does not amount to such a danger to the community that a person should necessarily be prosecuted in such a case. It was for this reason that the rule of sanction was introduced and the District Magistrate was to exercise his discretion after applying his mind to the facts of the case. Some instances may be sited where it would be unjustifiable to launch a prosecution merely because an unlicensed arm was found in the possession of an accused.

For example, 'A' had a licence for keeping a fire-arm, but the period for which the licence was given had expired by a few days and it was during that period that police recovered the fire-arm from him and sought the sanction of the District authority for prosecuting him. In such a case, if the offender can give a good reason why the licence was not renewed in time, the District Magistrate may in his discretion refuse to sanction the prosecution.

The offender might explain that for some urgent reason he had to go out of the district or that due to serious illness he was lying in bed and so could not take the necessary steps for the renewal of the licence. Such instances can be. multiplied. It was for this reason that a discretion was vested in the District authorities to sanction a pro-secution. I, therefore, feel hat after the passing of the Constitution of India, the police cannot be held to be empowered to launch these prosecutions without the control exercised by the District authorities.

15. Coming to the next point, I find Chat this question has been answered bv our High Court in several decisions. I agree with the view expressed in these earlier decisions of our High Court. In my opinion a judicial notice of the sanction can be taken under the provisions of Section 57(7) of the Indian Evidence Act. There are three decisions of our High Court which have held the same view. Two of these are Divisional Bench decisions and one is a decision by a single Judge. These decisions are, (1) Qasim Ali v. Rex, 1950 All LJ. 660, (2) State v. Sngarmal : AIR1951 All515 and (3) Gayadin v. State : AIR1958 All39 . Chandiramani J. observed in Qasim Ali's case : AIR1951 All515

'I have no hesitation in holding that where the question of proof of sanction by a public officer arises, the production of the original document containing the sanction signed by the public officer in itself sufficient to prove the sanction and no other evidence need be given to prove the sanction. In such a case it would even be sufficient to produce a duly certified copy of the sanction and no further proof need be given. In the present case, therefore, the production of the origi- nal sanction of the District Magistrate without further proof was enough to prove the sanction.'

The same view was expressed in : AIR1951 All515 . Wanchoo J. observed in it at page 521 :

'So far as the proof of the sanction is concerned, it is true that no one appeared in the witness box to formally prove the sanction. In this case, however, the sanction appears on the charge-sheet submitted by the police. The original sanction is, therefore, available to the court and is public document. A public document can always be proved by production of certified copies prepared under Section 76 Evidence Act as provided in Section 77 of the same Act. As the original was produced in court, we do not think that any formal proof was necessary.

The next point urged is that the sanctioningauthority, namely the District Magistrate, did notapply his mind to the facts of the case as he hassimply said 'Prosecution sanctioned.' There ishowever, no form prescribed for according sanction.Where, therefore, the sanction appears on the original charge-sheept which the District Magistratemust have perused before he gave the sanctionthe

inference may be drawn that the DistrictMagistrate applied his mind to the facts of the casebefore he ordered prosecution.'

The facts of the present case are exactly similarto the facts in Sagnrmal's case : AIR1951 All515 J am, therefore, of the opinion that is the originalchnnre-sheet was placed by the prosecuting agencybefore the Magistrate, the Magistrate initiated pro-ceedings after a valid sanction was placed beforehim. The omission to exhibit this sanction beforethe trial court would not take nway the validityof the initiation of the proceedings against theappellant. As regards the absence of proof of the signature of the District Magistrate on this sanction, I think that the case is covered by the provisions of Sections 56 and 57(7) of the Indian Evidence Act. Beg J. observed in Cayadin's case : AIR1958 All39 mentioned above as follows :

'The last argument, advanced on behalf of the applicant is that there is no evidence to prove the signature of the District Magistrate. This argu-ment also, in my opinion, is untenable. Section 56 of the Evidence Act lays down that no fact of which the court shall take judicial notice need be proved. Under Section 57(7) of the Act, a court is Bound to take judicial notice of the accession to oificc, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any official Gazette The signature in the present case purports to be that of a public officer who has described himself as the District Magistrate.'

In this case also the letters 'D.M.' with a signature which is not decipherable are found at the bot om of the endorsement. Judicial notice can be taken of this signature under Section 57(7) of the Indian Evidence Act. The only question which remains is whether the words 'Prosecutjon sanctioned' can also be held to be proved. In view of the authorities cited above and in view of the provisions of the Indian Evidence Act which relate to the proof of public documents, I am of the opinion that no formal proof of this endorsement is necessary and it can be held to be proved as an original public document.

16. A contrary view was expressed in Superintendent and Remembrancer of Legal Affairs, Bengal v. Moazzam Hossain : AIR1947 Cal318 . It was held in this case by a Bench of the Calcutta High Court that where the legislature was provided for a

sanction as a condition precedent to a criminal prosecution, such sanction must be strictly proved and no prosecution can be entertained unless the necessary sanction has been legally proved. This view was followed by the Madhya Bharat High Court in State v. Fulchand, AIR 1956 Madh B 50.

There is another decision of the Madhya Bharat High Court which is also on the same lines, It is Chandmal v. State, 1949 Madh B LR 423. The Madhya Bharat decisions did not consider the Allahabad decisions at all and they simply followed the Calcutta view. The Calcutta view was dissented from Qasim Ali's case, 1950 All LJ 660 and also in Gayadin's case : AIR1958 All39 mentioned above. The Calcutta decision did not consider the provisions of the Indian Evidence Act to which reference has been made above in reaching its conclusions.

I am therefore, of the opinion that the police charge-sheet being a public document could be proved by its presentation in original and no other proof is needed. As the endorsement of the District Magistrate is on this very documen, judicial notice of it can be taken under the provisions of Sections 56 and 57(7) of the Indian Evidence Act. There is thus a valid sanction on the record of the case and it cannot be said that the proceedings are vitiated for want of sanction.

17. The last point for consideration is whether the order passed by the District Magistrate is sufficient to infer that the sanction was given after the District Magistrate had applied his mind to the facts of the case. No doubt the order passed by the Magistrate is extremely brief and if it is read separately it does not indicate that the mind was applied to the facts of the case, but where the material involving the accused is given in sufficient detail in the document itself which bears the order of sanction the brevity of the order is not very re-levant, for in such a case the material mentioned in the document can safely be deemed to be a part of the sanctioning order. This is sufficient to meet the requirements of law, for it indicates that the relevant facts were placed before the sanctioning authority and he exercised his discretion after applying his mind to those facts.

18. For the reasons given above I find no force in this appeal and dismiss it. The appellant is on bail. He should surrender forthwith to serve out the sentence.

Nigam, J.

19. I have had the advantage of reading the judgment of my learned brother. I agree with the conclusions and concur in the proposed order. I add this note only because I have not found it possible to agree that the first part of Section 29 of the Indian Arms Act is hit by Article 14! of the Constitution. As this portion of Section 29 applies only to parts of country whieh had been generally disarmed, it might be possible to urge that there was a rational basis for classification inasmuch as because of the general disarmament of these parts no peaceful citizen could be expected to be in possession of any unlicensed weapons. This question does not arise in this case and it is not necessary for me to discuss the matter in any greater detail. I however agree that sanction is necessary for all prosecutions under sec. 19(f) of the Indian Arms Act relating to the districts of Avadh.

20. As stated earlier, I agree with my learned brother that a sanction was necessary and that the sanction having been duly obtained, it could be taken notice of under Section 57 of the Indian Evidence Act. I concur in the proposed order.

21. BY COURT : Accordingly we see no forcein ithis appeal and dismiss it. The appellant is onbail. He should surrender forthwith to serve outthe sentence.