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Diwan Singh Vs. the State

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Court : Allahabad

Decided On : Oct-28-1964

Reported in : AIR1966All19; 1966CriLJ2

Judge : H.C.P. Tripathi, J.

Acts : Arms Act - Sections 19

Appeal No. : Criminal Revn. No. 1864 of 1964

Appellant : Diwan Singh

Respondent : The State

Advocate for Def. : Rehman, A.G.A.

Advocate for Pet/Ap. : S.S. Tewari, Adv.

Disposition : Revision allowed

Judgement :
ORDER

H.C.P. Tripathi, J.

1. This revision is directed against an order of the learned 1st Additional Sessions judge of Etawah upholding the applicant's conviction and sentence of 18 months' R. I. under Section 19(f) of the Arms Act as recorded by a Magistrate, First Class

on 15-7-63.

2. According to the prosecution, on receiving information from one Ram Singh that the applicant and one Manohar were cleaning unlicensed gnus near the house of Jhanda Singh in village Dhanna, a police party consisting of Sub-Inspector Mahubub Ali and some constables reached the village on 15th August 1962 at about 10 P.M. and with the help of the witnesses arrested the applicant and his associate Manohar, both of whom were searched and a single barrelled muzzle loading gun along with some percussion caps, some gnu-powder and pellets were recovered from the possession of the applicant and a country-made pistol and four live cartridges were recovered from the possession of Manohar. A recovery memo Ex. Ka-J was prepared at the spot in the presence of the witnesses and the two arrested persons were taken to the police station along with the recovered articles.

Subsequently they were tried separately before a First Class Magistrate for an offence under Section 19(f) of the Arms Act and were convicted by him, Manohar filed an appeal against his conviction being Criminal Appeal No. 262 of 1963 which was heard by Sri Indra Singh, the learned Sessions Judge of Etawah, who allowed the same and quashed the conviction by his judgment, dated 8-10-1963. A terrified copy of that judgment has been filed by the learned counsel for the applicant.

3. The applicant's conviction, however, was maintained in appeal by the learned 1st Additional Sessions Judge of Etawah, Sri R.R. Jain, by his judgment, dated 14-10-63, Hence this revision.

4. Learned counsel for the applicant has argued that both Manohar and the applicant were arrested together, searched together and as a single recovery list was prepared about the articles alleged to have been recovered from them and as the same witnesses were examined. by the prosecution in both the trials before the Magistrate, it will be incongruous to convict one of them on the basis of the same evidence and to acquit the other. I find force in this contention,

5. The judgment of the learned Sessions Judge in Criminal Appeal No. 262 of 1963 setting aside the conviction and sentence of Manoliar was not challenged by the State by filing an appeal and, as such, has become final. It is no doubt true

that the learned Sessions fudge acquitted Manohar on a technical ground because, in his opinion, 'the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms'. He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned 1st Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.

6. If two persons are prosecuted, though separately, under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anamalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained.

7. The revision is allowed. The conviction and sentence of the applicant are set aside.He is on bail. His bail bonds are dischargedHe need not surrender.

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