Gaya DIn Vs. the State

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Court : Allahabad

Decided On : Apr-25-1957

Reported in : AIR1958All39; 1958CriLJ9

Judge : Beg, J.

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

Appeal No. : Criminal Revn. No. 1171 of 1955

Appellant : Gaya Din

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Mohammad Baqr Usmani, Adv.

Disposition : Revision dismissed

Judgement :

Beg, J.

1. This is a revision filed by one Gayadin who has been convicted under Section 19 (f), Arms Act, and sentenced to 18 months rigorous imprisonment. The applicant is a resident of Qaimganj in the District of Farrukhabad. On 12-11-1953 at about 7 P.M. he was found in possession of a country made pistol and two

cartridges. At that time he was in a grove near the Qaimganj Primary School. On receiving information about it, the station officer Qaimganj, Sri M. P. Agnihotri, came to the spot taking with him a Circle Inspector, a number of constables and some members of the public.

The applicant was found in the company of another person. Both of them were arrested and searched. From the person of the applicant one pistol (Ext. I) and two live cartridges (Ex. II) were recovered. The police framed a charge-sheet in respect of the case, and submitted to the District Magistrate for sanctioning the prosecution of the applicant under Section 19 (f), Arms Act. The sanction was given. The accused was prosecuted. He was tried by the Sub-Divisional Magistrate, Qaimganj. The applicant pleaded not guilty. He denied that Exhibits I and II, the pistol and cartridges were recovered from him. He further alleged that he was going to the railway station when he was suddenly arrested by the police.

2. The prosecution examined a number of witnesses to prove the afore-mentioned recovery. Nazar Ali (P. W. 1) is a vendor at the railway station, Sri M. P. Agnihotri is the station officer and Daulat Mir Khan is another witness. All these witnesses unanimously deposed that the illicit arms (Exts. I and II) were recovered from the possession of the accused under the circumstances alleged by the prosecution. The accused examined one witness namely Banwari Lal in support of his case.

The trial Court believed the prosecution version, and disbelieved the case of the applicant. It, accordingly, convicted the applicant under Section 19 (f). Arms Act and sentenced him as above. The applicant went up in appeal before the learned Sessions Judge of Farrukhabad. His appeal having been dismissed, he has filed this revision in the High Court.

3. Learned counsel appearing for the applicant in this case has not contested the findings of the Courts below on merits. He has, however, argued that the trial of the accused in the present case has been vitiated on three grounds, namely, (1) there is nothing to show that the sanctioning authority applied its mind before according the sanction, (2) the sanction granted in the present case is vague and (3) that, in any case the signature of the District Magistrate on the sanction is not proved.

4. As to the first argument, it is no doubt true that it is necessary that the sanctioning authority should apply its mind to the facts of the case before granting the sanction. It is, however, to be remembered that all that the sanctioning authority is required to do is to see whether, on the face of it, there exists a prima facie case for the grant of the sanction. It is not required to go into minute details of evidence against the accused.

If the circumstances of the case indicate that tile material facts of the case were brought to the notice of the sanctioning authority, and the sanctioning authority passed its order taking the said material into consideration, I am of opinion, that the requirements of the law would be complied with. In the present case, the facts are that the police framed a charge-sheet against the applicant. This charge-sheet mentions the name of the applicant as an accused. It also gives a list of the articles recovered from his possession. It further gives a list of the witnesses and a brief summary of the facts of the case. It also contains an endorsement by the prosecuting authorities to the following effect:

'Submitted to D. M. for sanction of the prosecution of the accused under Section 19 (f) of the Arms Act.'

This endorsement is dated 4-12-1953. Below this endorsement there is an order purporting to be signed by the District Magistrate. The order consists of two words only 'prosecution sanctioned.' This order is dated 5-12-1953. No doubt the order itself is a brief one, but in view of the fact that the order is passed on a document which contains the necessary materials to enable the sanctioning authority to make up its mind on the question whether the sanction should be granted or not, there is no reason to hold that mere brevity of the order constitutes any fatal defect in the form of the order.

In the above circumstances, the Court, in view of the provisions of Section 114 of the Evidence Act, would be justified in presuming that the authority which sanctioned the prosecution of the applicant had applied its mind to the facts presented before it, and had passed the order after due compliance with the provisions of law.

5. The second argument of the learned counsel for the applicant is that the sanction is vague in so far as it does not give the particulars of the offence. It may be mentioned that the date of the offence and various other particulars relating to it are given in the charge-sheet. The order of the District Magistrate sanctioning the prosecution is written on the same charge-sheet. It may also be noted that the case is a simple one. There is only one incident in respect of which the accused is prosecuted, and there is only one offence which is said to have been committed, namely an offence under Section 19 (f), Arms Act.

6. Learned counsel for the applicant has cited Ratilal Bhagwanji v. State, 1953 Cri LJ 926 : (AIR 1953 Sau 89) (A), in support of his contention. I am of opinion that this case is distinguishable. In the case cited the accused had been in the service of the Junagadh State for a period of ten years. He alleged to have forged documents and prepared false accounts thereby committing a number of offences. The sanction did not mention the time or even the period of offences in respect of which the accused was charged, and it was impossible to ascertain from it the exact facts which were to be made the basis of the prosecution.

In such a case there could be a reasonable grievance. No such features exist in the present case. I am, therefore, of the opinion that the sanction in the present case cannot be said to be bad on the scope of vagueness or uncertainty.

7. The last argument advanced on behalf of the applicant is that there is no evidence to prove the signature of the District Magistrate. This argument also, in my opinion, is untenable. Section 58, 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 office, 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.' The fact that his appointment to such office has been notified in the official gazette is not challenged before me. The Court can, in the circumstances justifiably make a presumption that the signature

under the order of sanction is the genuine signature of the authority concerned, and that the said authority as described under the signature is the District Magistrate who is the person authorised to grant sanction for such a case.

Further, Section 74(1)(iii) of the Act provides that documents forming the acts or records of the acts of the public officers, legislative, judicial and executive, of any part of India, or of the commonwealth or of a foreign country, are public documents. In view of the said provision the charge-sheet on which the order of the District Magistrate is written is a public document. Under Section 77 of the Act certified copies of the contents of such a document are themselves proof of the contents of the original.

In the present case the original document was itself produced by the prosecution. If a certified copy could be considered to be a sufficient proof of the content's of the original, a fortiori the production of the original document itself must be considered to be more than enough for the same purpose.

8. On behalf of the applicant reference was made to Supdt. and Remembrancer of Legal Affairs, Bengal v. Moazzam Hossain : AIR1947 Cal318 , which is a Bench decision of the Calcutta High Court. This decision would appear to support the contention of the learned counsel for the applicant. With respect, I find it difficult to subscribe to the view taken therein. It is also opposed to the view taken by the Allahabad High Court in Qasim Ali v. Rex 1950 All LJ 660 (C) and Sagar Mal v. State : AIR1951 All816 .

9. For the above reasons, I would dismiss this revision and maintain the conviction and sentence of the applicant.