

Jawahar Vs. State

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SooperKanoon Citation : sooperkanoon.com/449751

Court : Allahabad

Decided On : Feb-10-1967

Reported in : AIR1968All87; 1968CriLJ230

Judge : Gangeshwar Prasad, J.

Acts : Arms Act, 1878 - Sections 4 and 39; Arms Rules, 1962 - Rule 2

Appeal No. : Criminal Revn. No. 991 of 1965

Appellant : Jawahar

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Virendra Saran, Adv.

Disposition : Application allowed

Judgement :

ORDER

Gangeshwar Prasad, J.

1. This application in revision raises the question whether an Additional District Magistrate can sanction a prosecution under Section 39 of the Arms Act without being empowered by the State Government to do so.

2. The applicant was convicted under Section 25 of the Arms Act by the trying Magistrate and his conviction was upheld by the Sessions Judge. It is not in dispute that the sanction on the basis of which the prosecution started had been given by an Additional District Magistrate, and the learned Assistant Government Advocate has, after enquiry, state before me that the Additional District Magistrate, who sanctioned the prosecution, had not been directed or empowered by the State Government to Act under Section 39 of the Arms Act.

3. The contention of the learned counsel for the applicant is that the Additional District Magistrate was incompetent to accord the sanction This point was raised before the trying Magistrate as well, but he took the view that since under Rule 2(f) of the Arms Rules, 1962 a District Magistrate includes, in relation to any district or part thereof, an Additional District Magistrate, the sanction in the present case was valid. The Magistrate was evidently wrong in this view.

4. The definitions provided by the Arms Rules govern the Rules only and they cannot be applied to expressions used in the Act. The requirement of a sanction as an essential condition of a prosecution is contained not in the Rules but in Section 39 of the Act, and the expression 'District Magistrate' cannot therefore have in the said provision, that extended meaning which has been assigned to it by the definition given in the Rules Under Section 10(2) of the Code of Criminal Procedure it is certainly open to the State Government to direct that a Magistrate appointed as an Additional District Magistrate shall have all or any of the powers of a District Magistrate under the Code or under any other law for the time being in force. But, as I have already noted. It is conceded on behalf of the State that the State Government had not directed the Additional District Magistrate concerned to sanction prosecution under the Arms Act. The sanction purporting to have been granted by the Additional District Magistrate was, therefore, incompetent and the prosecution of the applicant was accordingly barred from cognizance.

5. The application is allowed, the conviction and sentence of the applicant are set aside, and he is acquitted. The applicant is on bail; he need not surrender to his bail and his bail bonds are discharged.