

Khalil Vs. State

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Court : Allahabad

Decided On : Jul-25-1975

Reported in : 1976CriLJ465

Judge : Hari Swarup, J.

Appellant : Khalil

Respondent : State

Judgement :

ORDER

Hari Swarup, J.

1. This revision is directed against the conviction of the applicant under Section 25 of the Arms Act and sentence of one year's rigorous imprisonment awarded to him.

2. The applicant was found along with some others manufacturing illicit arms in .a house. At the time of the search the applicant was found engaged in the process of manufacturing revolvers. Besides raw material and manufactured parts, one complete revolver was also recovered. Both the Courts have believed the prosecution version.

3. learned Counsel for the applicant has urged that the conviction of the applicant is bad because the search had not been conducted in strict accordance with the provisions of Section 103 of the Code of Criminal Procedure, 1898, which is equivalent to Section 100, Cr.P.C. 1973. Section 103, Cr.P.C. runs as under:

103 (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

4. In the present case the evidence of the police officer who had conducted the search was that he had taken four persons on the way to the place. One of them was produced as a witness in the case. He stated that he lived two and a (half?) miles away. The house searched is in the town of Rampur. The contention is that this witness could not be deemed to be inhabitant of the locality and as others had not been produced they should be presumed to be not of the locality. From the non-production of the witnesses, no such presumption can be drawn. The persons taken on the way may be of the same locality. Even if they were not the circumstance will not invalidate the search. In the case of 'Sunder Singh v. State of U.P.' : 1956 CriLJ801 it was held:

In respect of the search of the room occupied by the appellant and the recovery of the blood stained shirt and bloodstained pants aforesaid it was necessary to have at least two search witnesses as required by Section 103. Assuming that the two rickshawallahs who actually witnessed the search as found by the courts below were not respectable inhabitants of the locality, that circumstance would not invalidate the search.

It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of Section 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence which is a matter for courts of fact and this Court would not ordinarily go behind the findings of fact concurrently arrived at by the Courts below.

5. Both the Courts below have placed reliance besides the one public witness, on the two Sub-Inspectors of Police who were in the search party. Their evidence to the effect that the accused were found manufacturing arms and were arrested at the spot has been believed by the courts below. The mere irregularity committed by the searching officer in taking one witness from the way who lived a couple of miles away in the City cannot be deemed sufficient either to invalidate the search or to make the recovery unreliable. The findings of the Courts below are based on an appreciation of evidence and which they have believed, nothing has been shown to me on the basis of which I might come to a different conclusion. The conviction of the applicant cannot accordingly be set aside.

6. learned Counsel then contended that the courts below should have followed the procedure given in Section 360 of the new Code of Criminal Procedure, and released the applicant on probation for good conduct. Section 360, Cr.P.C. provides that if certain conditions exist the convict may be released on probation. Section 361, Cr.P.C. provides:

Where in any case the court could have dealt with

(a) an accused person under Section.. 360 or under the provisions of the Probation of Offenders Act, 1958, or

(b) a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders,

but has not done so, it shall record in its judgment the special reasons for not having done so.'

The contention of the learned Counsel is that as no previous conviction had been proved against the applicant, conditions existed for his being dealt with under Section 360, and as the courts below have recorded in the judgment no reasons for not releasing him on probation, the award of sentence is illegal. The contention overlooks the relevant terms of Section 360. The circumstance that a person is a first offender is not by itself sufficient to bring the case within the ambit of Section 360, the existence of other conditions is equally essential. The other requirements

concern the age, character and antecedents of the offender and the circumstances in which the offence had been committed. In the present case the age of the applicant is about thirty five years. There is no mitigating factor in the circumstances in which the offence was committed. The manufacture of illicit arms particularly revolvers, in the present set up cannot be taken as anything but a serious offence with a wide adverse impact on the society. The illegal activity of the applicant was not only an offence by itself, but was the source which could generate more serious offences. Further this offence is of a character which involves in it the ingredients of a commercial activity, it can be carried on as a business with prospects of big profit, It can bring economic gain to the offender and has thus inherent in it the quality of repeatability making high the chances of recidivism It was thus not a case which could be dealt with under Section 360, Cr.P.C.,' If in these circumstances the courts below i did not give special reasons for not acting, under Section 360, their judgments on the question of sentence cannot be treated as erroneous.

7. The revision is dismissed.

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