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The State Vs. Mohammad Ali

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Court : Allahabad

Decided On : Apr-19-1955

Reported in : AIR1955All700; 1955CriLJ1555

Judge : H.S. Chaturvedi and ;Mulla, JJ.

Acts : Arms Act, 1878 - Sections 4 and 19; Code of Criminal Procedure (CrPC) , 1898 - Sections 428

Appeal No. : Criminal Appeal No. 654 of 1954

Appellant : The State

Respondent : Mohammad Ali

Advocate for Def. : Mohd. Ayub, Adv.

Advocate for Pet/Ap. : Addl. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Mulla, J.

1. Mohammad Ali, the opposite party in this case, was prosecuted under Section 19(f) of the Amis Act by the police of Talgaon, district Sitapur.

2. The charge against Mohammad Ali was that a pistol was recovered from his possession. The trial court felt a doubt whether this pistol could be used as a fire-arm and thereupon asked the. State prosecutor to satisfy him that it could be used as a fire-arm. The State prosecutor instead of satisfying the trial court on that point put in an application stating that there is no provision in law which empowered the accused to ask for a demonstration.

When the court asked the State prosecutor to satisfy it regarding the condition of the fire-arm recovered, it was not the accused who was making this demand. A court before convicting an accused person is entitled to satisfy itself that the arms recovered from the possession of an accused person fulfils the definition of Arms given under Section 4 of the Arms Act, As the trial court found that the weapon recovered in this case did not fulfil this definition, it acquitted the opposite party.

It is against this order of acquittal that the State has come up in appeal.

3. Before us the learned Additional Government Advocate has stressed that a fire-arm even if it is not in working order remains a fire-arm within the meaning of Section 4 of the Arms Act. He relied upon the decision in -- 'Swami Dayal v. State', AIR 1953 All 353 (A).

In this decision learned Judge of this Court observed that in judging whether a particular weapon is a fire-arm or not the test is not whether that particular weapon is serviceable at the time but whether it has lost its specific character and ceased to be a fire-arm. This observation was based upon a Full Bench decision of the Madras High Court in -- 'Queen-Empress v. Jayarami Reddi', 21 Mad 360 (FB) (B). We are in agreement with the view expressed above, but we do not find that this helps the State counsel in this case.

It is true that a weapon does not cease to be a fire-arm if it has not lost its specific character but the onus of proving that a weapon has not lost its specific character is upon the prosecution. Where doubts are entertained about it, it is necessary for the prosecution to satisfy the court that the weapon still possesses its specific character. In this case the trial court felt a doubt and even gave an opportunity to the State prosecutor to satisfy him, yet this opportunity was not availed of by the

State prosecutor.

Under the circumstances there is nothing on the record of the case to show that the weapon recovered in this case had not ceased to be a firearm within the meaning of Section 4 of the Arms Act. Admittedly this weapon is not in a serviceable condition and the only question that remains to be decided is whether by slight repairs it can be rendered serviceable.

4. On the evidence before us we are not in a position to determine whether slight repairs or changes could turn this weapon into a serviceable weapon or not. The prosecution has, therefore, failed to discharge the onus. We, therefore, find that no error of law was committed by the trial court.

5. The State counsel made a request that we should permit him to examine an expert at this stage of the case or that we should send back the case for further evidence being taken on the point. The case was decided on 27-2-1954, and about fourteen months have elapsed since that time. The case does not seem to us to be so important so that a further opportunity should be given to the prosecution to prove its case. On the record, as it stands, no fault can be found in the decision of the trial Court,

6. We, therefore, uphold the order of the trial court and dismiss this appeal. The opposite party is on bail. He need not surrender and his bail bonds are cancelled.

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