

State of Uttar Pradesh Vs. Munna

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Court : Allahabad

Decided On : May-18-1972

Reported in : 1973CriLJ1708

Judge : J.M.L. Sinha, J.

Appellant : State of Uttar Pradesh

Respondent : Munna

Judgement :

J.M.L. Sinha, J.

1. This appeal arises out of the judgment and order dated 3rd October, 1968 passed by A. D. M. Budaun acquitting the respondent of an offence under Section 25, Arms Act.

The facts of the case can briefly be stated thus:-

On 31st March. 1968 near about 10 A.M. Ram Lai. Constable (P-W, 1). was on patrol duty in the locality known as Sarkari ganj. district Budaun. He received information through an informer that the appellant was coming from the side of the railway station and had a kripa in his possession for which he had no licence. Ram Lai. Constable, therefore, picked up Munne (P.W. 2) and Afzal (P.W. 3) and then proceeded towards the railway station. A little distance ahead they noticed

the appellant coming from the side of railway station. On seeing the police people he stopped and wanted to turn back. He was however surrounded by Ram Lai and the accompanying persons and was arrested. On a search being taken he was found in possession of a Kripan for which ho had no licence.

A formal report was lodged by Ram Lai. Constable, at Police Station Kotwali, Budaun on 31st March, 1968 at 11-5 A.M. A case under Section 25, Arms Act was registered against the appellant and after completion of investigation a charge-sheet was submitted for his prosecution.

2. The appellant in his statement In the trial Court denied the prosecution case and pleaded enmity with Ram Lai. The trial Court on a consideration of the evidence adduced in the case came to the conclusion that the charge under Section 25, Arms Act was not made out beyond reasonable doubt against the appellant and in the result acquitted him. Feeling aggrieved against it the State has come up in appeal before this Court.

I have heard learned Counsel on either side and have also perused the record of the case.

learned Counsel for the respondent raised a preliminary objection regarding the maintainability of the appeal. According to the learned Counsel the appeal having been presented before the Registrar on a working day, which was not the last date of limitation, the appeal was not validly presented. In the particular circumstance of this case, however, it is not necessary to enter into a discussion of this academic point. The appeal can be disposed of on different grounds,

3. A perusal of the judgment of the trial Court reveals that the trial Court acquitted the respondent only on the ground that the Kripan was not covered under Section 25. Arms Act.

A perusal of Section 3 of the Indian Arms Act would reveal that it relates to licences for acquisition and possession of fire arms and ammunition. Section 4 of the Act states that if the Central Government is of opinion that having regard to the circumstance prevailing in any area it is necessary or expedient in public interest

that acquisition, possession or carrying of arms, other than fire arms, should also be regulated, it may by notification in the official Gazette, direct that Section 4 shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession, or carry in that area arms of such class or description as may be specified in that notification unless he holds In that behalf a licence issued in accordance with the provisions of the Act and the Rules made thereunder. Rule 3 of the Arms Rules. 1962 states that for the purposes of the Act and the Rules 'Arms' or 'Ammunitions' shall be of the categories specified in columns 2 and 3 of Schedule I. Item 5 of Schedule I appended to the rules makes a mention of 'Kripans'. A cumulative reading of Section 4 of the Act, Rule 3 of the Rules and Item 5 of Schedule 5 leads to the conclusion that pos-' session of Kripan cannot be an offence unless a notification has been issued by] the Central Government under Section 4 of the Act.

4. Now. a perusal of the records indicates that there is no mention of any notification of the aforesaid nature either in the first information report or in the charge-sheet submitted by the police. A note was submitted for soliciting sanction of the District Magistrate for prosecution. There is no mention of any; such notification in that note as well. The District Magistrate by his order Ex. Ka-3 accorded sanction to prosecute. That also does not make mention of any such notification. The respondent was examined under Section 251-A. Cr.PC by the court below on 19th June, 1968. Even in the questions put to the respondent at that stage it is not mentioned as to under what notification, if at all. possession of Kripan is an offence punishable under Section 25 of the Arms Act. Subsequent to the examination of the respondent, the trial Court framed a charge against him. Even in that charge there is no mention of any such notification. All that has been stated in the various papers from beginning to end is that the respondent was found in possession of a Kripan having its blade more than 1016 cm. and he thereby committed an offence under Section 25 of the Arms Act. I have however already indicated that neither Section 3 nor any other section under the Act by itself makes the possession of Kripan an offence punishable under Section 25 of the' Arms Act.

5. When any act is an offence by virtue of a clear provision contained in any Act or the Rules framed thereunder, it is sufficient to mention the particular section or the rule to give notice to the accused of the charge against him. But when any act is said to be an offence by virtue of a notification issued under any Act, it is necessary that either a copy of the notification be placed on the record of the case or the number and date of the notification is mentioned in the charge-sheet and, preferably, also in their question put to the accused or in the charge framed against him so that the accused may have notice of the precise nature of the charge that he has to meet. This was not done in the instant case.

In fact it appears on a perusal of the record that none applied his mind at any stage that there was any notification making possession of a 'Kripan' an offence. The case was handled at all stages in a mechanical manner. This would be apparent from the fact that even though no sanction under Section 39 of the Act is required for the prosecution of any person for the possession of an unlicensed Arm, other than a fire arm, the A.P.P. concerned submitted the record to the District Magistrate for obtaining his sanction and the District Magistrate accorded the sanction. If the A.P.P. or the District Magistrate had applied their mind to the facts of the case it would have been immediately revealed to them that since the respondent was said to be charged only with the possession of a Kripan no sanction for prosecution was needed.

In any case as already stated earlier there is nothing on record to indicate as to how the possession of Kripan is an offence. In fact learned Counsel for the appellant also when called upon could not provide the court with the particulars of the notification prohibiting, if at all, the possession of a Kripan without a licence. The result is that on the material existing on record it is difficult to say that the respondent was guilty of an offence under Section 25 of the Arms Act merely because he was in possession of a Kripan.

6. However in fairness to the prosecution I have also examined the case on the assumption that there did exist a notification prohibiting possession of a Kripan without a licence.

The prosecution story as already set out earlier appears to be most stereotype. According to the prosecution a constable on patrol duty got information through an informer that a person was coming from a particular side having in his possession an unlicensed Arm; the constable collected witnesses and proceeded in the direction of the place pointed out by the informer; after he had covered some distance he came across the accused who tried to run away on seeing the police but was overpowered and arrested. It is always that same story with which these cases are brought. To my mind the story smacks of artificiality and should not be accepted as true unless it is supported by independent and reliable witnesses.

7. Out of the three witnesses who gave direct evidence against the respondent. Bam Pal Singh (P.W. 1) is the constable who had arrested the respondent Munney (P.W. 2) is a petty hotels keeper and. on his own admission, he had appeared as a witness for the police in an earlier case also. Afzal (P.W. 3) is a rickshaw puller by profession and If was elicited in his cross-examination that he was carrying on profession of plying a rickshaw without having obtained any licence. It is obvious that by virtue of their profession Munney and Afzal (P.Ws.) were amenable to police influence. In the case of Munney, besides his profession there is also the fact that he had earlier also appeared as a witness for the police. As for Afzal, since he was plying a rickshaw without a licence, he could be prosecuted by the police any time and could not therefore incur their displeasure. It, therefore, does not appear safe to place reliance on the evidence of Munney and Afzal (P.Ws.). Once the evidence of Munney and Afzal Is excluded there remains the solitary testimony of Ram Lai, Constable (P.W. 1). In the particular circumstance of this case it Is not safe to place reliance on the uncorroborated testimony of Ram Lai Singh constable.

I thus find that the evidence on record did not make out the prosecution case beyond reasonable doubt against the respondent.

8. For all the reasons stated above there is no scope for any interference in this appeal. The appeal accordingly fails and is hereby dismissed.