

Nanhey Vs. State

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Court : Allahabad

Decided On : Apr-06-1978

Reported in : 1978CriLJ1001

Judge : V.N. Varma, J.

Appellant : Nanhey

Respondent : State

Judgement :

ORDER

V.N. Varma, J.

1. This revision is directed against an order dated 19-9-1973 confirming the conviction and sentence recorded against the applicant under Section 25 Arms Act,

2. Briefly put the prosecution case is that on 6-8-72, at about 10 A.M., constable Vidya Ram was on patrol duty in the company of some other constables and when he reached near the Mandai of Thakur Ji in village Changsi, he saw the applicant sitting under a Pipal tree, After seeing the police party he got nervous, and immediately tried to leave the place. He was asked to stop, but instead of stopping, he started running. The police party chased him and with the help of some witnesses succeeded in catching him, He was none other than the applicant

of this case, He was searched and a country-made gun and two live cartridges were recovered from his possession. These articles were sealed at the spot. The applicant was thereafter taken to Thana where a case was registered against him under Section 25, Arms Act. The usual investigation followed and eventually he was sent up to stand his trial under Section 25, Arms Act,

3. The applicant pleaded not guilty and attributed his false Implication due to enmity and village Party-bandi.

4. The learned Magistrate found the prosecution case fully proved against the applicant and he, therefore, convicted him and sentenced him to one year R. I. The applicant went up in appeal, but in vain. Aggrieved, he has come up in revision to this Court.

5. I have heard the learned Counsel for the applicant at sufficient length and have also perused the record of the case. I find that the sanction for the prosecution of the applicant in this case is not in accordance with law and, therefore, this revision must succeed. Under the Arms Act a person can be prosecuted only after the District Magistrate has given the necessary sanction for his prosecution. This sanction is not intended to be nor is an automatic formality; it is absolutely essential that the provisions in regard to sanction should be observed with complete strictness. The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In the case before us, the sanction given by the District Magistrate runs as follows:

Sanction for prosecution under Section 25 of the Arms Act of the accused Nanney for the alleged unlawful possession of one country made gun and 2 live cartridges is accorded.

A reading of the above sanction will show that the District Magistrate gave the sanction for the prosecution of the applicant without considering the evidence that was available against him. Obviously, therefore, he gave the sanction without applying his mind to the facts and circumstances of the case. Such a sanction is

no sanction in the eyes of law. The prosecution of the applicant in the absence of a proper sanction was not in accordance with law and this Court has, therefore, no option but to acquit him.

6. In the result, I allow this revision and set aside the conviction and sentence passed against the applicant. He is on bail, his bail-bonds are discharged and he need not surrender to them.

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