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State Vs. Fulchand

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Court : Madhya Pradesh

Decided On : Feb-11-1955

Reported in : 1956CriLJ226

Judge : Nevaskar and ;Samvatsar, JJ.

Appellant : State

Respondent : Fulchand

Judgement :

Samvatsar, J.

1. This is an appeal against acquittal of one Phoolchand S/o Mishrilal Lohar, filed by the state.

2. On 24-6-1953 one single barrel, 12 bore gun No.A-283971 was recovered from the possession of the respondent and it was found that he had no license for it. He was therefore prosecuted under S-19 (f), Arms Act, before the Sub-Divisional Magistrate, Dharampuri. At the conclusion of the trial the learned Magistrate acquitted the accused. The State has therefore preferred this appeal to the High Court.

3. The respondent's main contention before the trial Court was that he held a license for the said gun but in the license which was issued to him the number and

description of the gun had been wrongly mentioned. The learned Magistrate overruled this contention but acquitted the accused because in his opinion there was no proper sanction as required by Section 29, Arms Act, for the prosecution of the accused respondent.

4. Mr. Patel, the learned Deputy Government Advocate, urged that the requisite sanction was obtained before the prosecution was launch-ed as required by Section 29, Arms Act. The alleged sanction is produced at Ex P/3 but the learned lower Court has held that '(I) it was not proved that the authority giving this sanction was a duly constituted authority; (ii) that the sanction was not proved; and (iii) that the said sanction was-defective in as much as it did not contain facts from which it could be inferred, that the necessary material was placed before the sanctioning authority and it had applied its mind to it

5. On the first point the main contention urged was that Mr. Uttamsingh, the District Magsitrate, Dhar, was not appointed a first class Magistrate and therefore he could not be invest-ed with the powers of a District Magistrate trader Section 10, Criminal P.C.

6. On the second point, it was urged that the sanctioning authority was not examined to prove the signature on the sanction.

7. Lastly it was urged that there was no evidence to show that the necessary material was placed before the sanctioning authority for its consideration before the sanction was granted.

8. Mr. Patel, the learned Counsel for the State submitted that official acts must be assumed to be properly done and thereforhe appointment of Mr. Uttamsingh as District Magistrate must necessarily involve that he was a only appointed first class Magistrate also. His contention on the second point was that the sanction, was produced in Court as Ex. P/3 and being art official document it was enough if it was produced and there was no need to prove its execution by examining any witnesses. As regards the third point the learned Counsel submitted that the sanction was self-contained and disclosed that the material facts were considered by the sanctioning authority.

9. I shall deal with the second point first. The sanction Ex. P/3 purports to be given by the District Magistrate Dhar. It appears to have been signed by Mr. Uttamsingh but the seal of the District Magistrate is not affixed to the document,

10. P. W. Thakurdas who produced the sanction Ex. P/3 in Court admitted that it was not signed by Mr. Uttamsingh in his presence and expressed his inability even to identify the signa-ture of Mr, Uttamsingh. The sanctioning authority has not been examined. It cannot therefore be said that the sanction has been proved as required by the provisions of the Evidence Act.

11. The learned Deputy Government Advocate however submitted that Court should have taken judicial notice of the fact that Ex P/3 was signed by the District Magistrate because there was under the signature of Mr, Uttamsingh his designation mentioned. The contention is how-ever opposed to the view expressed by a Division Bench of this High Court in - 'Chandmal v. State' 1949 Madh-B LR 423 (A) That was a case in which the accused was prosecuted for breach of the provisions of Indore Cotton and Yarn Control Order.

According to the provisions of that order no Magistrate could take cognizance of the offence without the previous sanction of the Textile Com-missioner. A document purporting to be the requisite sanction was produced by the prosecution but it was not proved by examining the sanctioning authority. The learned Judges following the decision of the Calcutta High Court in - 'Supdt. and Remembrancer of Legal Affairs Bengal v Moazzem Hossain' AIR 1947 Cal 318 (B), held that the sanction was not proved and refused to act upon it.

12. In view of the decision referred to above, I am unable to accept the contention of Mr. Patel that it was unnecessary, to prove the sanction by examining the sanctioning authority,

13. The sanction is not duly proved and the prosecution must fail on this ground alone.

14. In the view I am taking it is unnecessary to discuss the other points raised.

15. The appeal fails and is hereby dismissed.

Nevaskar, J.

16. I agree.

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