

Om Pi-akash Vs. State

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Court : Delhi

Decided On : Aug-26-1980

Reported in : 1980RLR649

Judge : M.S. Joshi, J.

Acts : [Arms Act, 1959](#) - Sections 39

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 442 of 1980

Appellant : Om Pi-akash

Respondent : State

Advocate for Pet/Ap. : K.K. Sud and; T.S. Sodhi, Advs

Judgement :

M.S. Joshi, J.

(1) Om Prakash, petitioner, is being tried by the court of Shri A.K. Garg, Metropolitan Magistrate, Delhi, for an offence u/s 25 of the Arms Act. The accused has preferred the present petition u/s 482 of the Code of Criminal Procedure for the said proceeding⁸ being quashed. The one simple question arising in the case is whether the Magistrate has any jurisdiction to proceed against the accused because the prosecution undertaken by the Magistrate was never sanctioned by the District Magistrate as required by section 39 of the [Arms Act, 1959](#).

(2) The pistol involved in the case was said to have been recovered by A.S I. Raghunath Singh from the petitioner on 9.1.1979. An Asstt. Commissioner of Police investigated the matter and concluded that the recovery alleged to have been effected by the said A.S.I, was false and a report was consequently made to the Magistrate concerned for the case being struck off. Rather than accepting the report of the police the learned magistrate thought it fit to initiate the proceedings against Om Prakash at his own initiative.

(3) It is laid down by Section 39 of the Arms Act .that no prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate. The present case has arisen because of the alleged violation of the said section 3 by the accused. The sanction of the District Magistrate, which is a condition precedent for launching the prosecution u/s 25 of the Arms Act, is admittedly lacking in this case. There is consequently no jurisdiction with the trial magistrate to investigate the charge laid by himself against Om Prakash. That the court does not acquire jurisdiction in a case like the one under consideration in the absence of the prescribed sanction is supported by abundant authorities and the learned counsel appearing for the State has nothing to urge against the prayer of the accused. (See State V. Ram Chand, ; Muhammad Safi V. The State, : 1966 CriLJ75 and Smt. Javitri Devi V. State. 1971 Cri, L J. 1949). One 'plea feebly advanced for the State was that this case is distinguishable because of the fact that here the Magistrate has taken cognisance of the offence alleged to have been committed by the accused at his own initiative. But, there is no force in this plea because there being total lack of jurisdiction in the Magistrate for want of the requisite sanction, the proceedings being held by him are null and void. The petition is accordingly accepted and the prosecution pending in the court of Sh. A.K. Garg, is hereby quashed.