

Smt. Javitri Devi Vs. State

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Court : Delhi

Decided On : Feb-12-1971

Reported in : 1971CriLJ1340

Judge : M.R.A. Ansari, J.

Appellant : Smt. Javitri Devi

Respondent : State

Judgement :

ORDER

M.R.A. Ansari, J.

1. The petitioner was prosecuted before the Judicial Magistrate 1st Class, New Delhi, for an offence Under Section 25 of the Arms Act 1959 (hereinafter referred to as the Act) with the allegation that on 15-12-1968 at about 12 noon the petitioner was found in possession of a revolver without a license. The police filed the challan against the petitioner on 26-12-1968 and the petitioner appeared in the trial Court on 18-1-1969. Copies of the documents referred to Under Section 173, Cr.PC were supplied to her. These copies did not include the copy of any order sanctioning the prosecution of the petitioner as required Under Section 39 of the Act. On 21-2-1969, a charge was framed against the petitioner Under Section 25 of the Act to which the petitioner pleaded not guilty. The case was then fixed for taking the prosecution evidence. The case came up for hearing on a number of

dates but no evidence was actually recorded. On 6-12-1969, the learned Counsel for the petitioner raised an objection before the learned trial Court that the petitioner could not be prosecuted for an offence Under Section 25 of the Act without the previous sanction of the District Magistrate as required Under Section 39 of the Act. The learned Magistrate overruled this objection on the ground that the District Magistrate had accorded sanction by his order dated 6th February, 1969. Against that order of the learned Magistrate, the petitioner filed a revision petition before the Additional Chief Judicial Magistrate, New Delhi, and the latter has submitted a report to this Court with a recommendation that the proceedings started against the petitioner be quashed and the petitioner be discharged.

2. Section 39 of the Act reads as follows:

39. Previous sanction of the District Magistrate necessary in certain cases.

No prosecution shall be instituted against any person in respect of any offence Under Section 3 without the previous sanction of the District Magistrate.

Admittedly, in this case, a challan had been filed before the Magistrate on 26-12-1968 and the order of the District Magistrate sanctioning the prosecution of the petitioner is dated 6-2-1969. It is not clear from the record on what date the sanction order was filed in the trial Court, It could have been filed in the Court some time after 6-2-1969 and before 6-12-1969 on which date the learned trial Court overruled the objection raised by the petitioner. In any case, no sanction order had been obtained from the District Magistrate prior to the filing of the challan against the petitioner. The question is whether the proceedings in the trial Court are vitiated by reason of the fact that the challan was filed against the petitioner without obtaining the previous sanction of the District Magistrate.

3. The learned Counsel for the petitioner has cited the following decisions in which it was held that the sanction of the District Magistrate has to be obtained even before the charge-sheet is filed against the petitioner and that a sanction obtained at a subsequent stage will not cure the defect and the entire proceedings are vitiated:

1. Girja Suri v. Emperor : AIR1946 Pat160 .
2. Ganesh Bahadur v. The State A.I.R. GUA73.
3. State v. Koli Nagji Mansang A.I.R. 1952 GUJ 82.

These decisions undoubtedly support the stand taken by the learned Counsel for the petitioner. Shri D. C. Mathur, learned Counsel for the State, however, contends that all the above decisions were given Under Section 29 of the Arms Act 1878 and not Under Section 39 of the Arms Act, 1959 and he points out that the word used in Section 29 of the old Act is 'proceedings' whereas the word used in Section 39 of the new Act is 'prosecution'. He seeks to draw a distinction between these two words and he contends that Under Section 39 of the new Act, sanction may be obtained at a later stage of the proceedings, namely, after the charge is framed. According to the learned Counsel, the prosecution, begins only after the charge is framed. In support of this contention, reliance is sought to be placed on a decision of Patna High Court in Emperor v. Ghulam Nabi : AIR1928 Pat146 , in which it was held that the expression 'proceedings' in Section 29 of the Arms Act means legal proceedings in court and not searches or arrests or investigations made by the police in exercise of the powers conferred upon them by the Criminal P.C. or any other law. I do not find anything in these observations to support the stand taken by the learned Counsel. As a matter of fact, it was further held in this very case that 'as in the case of a suit a proceeding is instituted when. for the first time the adjudication of a court of competent jurisdiction is sought.' If this test is applied in the present case, the filing of the challan by the police against the petitioner amounts to seeking the adjudication of the Court and would thus amount to institution of proceedings within the meaning of Section 29 of the old Act. In any case, this decision does not support the contention of the learned Counsel that the institution of the proceedings are distinct from the institution of a prosecution.

4. The language of Section 39 of the (new) Act is similar to the language of Section 132, Code of Criminal Procedure. Section 39 of the Act has already been reproduced supra. The relevant portion of Section 132, Criminal P.C. reads as follows:

No prosecution against any person for any act purporting to be one under this Chapter shall be instituted in any Criminal Court except with the sanction of the State Government.

There is a decision of the Supreme Court Under Section 132 of the Code of Criminal Procedure in Nagraj v. State of Mysore. : 1964 CriLJ161 . This is what their Lordships of the Supreme ' Court have held in that case:

When a complaint is made to a criminal court against any police officer and makes allegations indicating that the police officer had acted or purported to act Under Sections 127 and 128 of the Code and in so doing committed some offence complained of, the Court will not entertain the complaint unless it appears that the State Government had sanctioned the prosecution of that police officer.

What would be the effect when such a complaint is filed without the requisite sanction, was also considered by the Supreme Court and it held as under:

If the Court comes at any stage to the conclusion that the prosecution could not have been instituted without the sanction of the Government, it is not essential that the Court must pass a formal order discharging or acquitting the accused. In fact no such order can be passed. If Section 132 applied, the complaint could not have been instituted without the sanction of the Government and the proceedings on a complaint so instituted would be void, the Court having no jurisdiction to take those proceedings. When the proceedings be void, the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected.

The rule laid down by the Supreme Court in the above case is fully applicable to the facts of the present case and as admittedly the sanction of the District Magistrate was not obtained prior to the filing of the challan against the petitioner, the prosecution of the petitioner was not properly instituted and the Court did not have any jurisdiction to take cognizance of the case filed against the petitioner. In such cases where want of sanction takes away the jurisdiction of the Court, the defect is not curable Under Section 537, Code of Criminal Procedure, and the entire proceedings are vitiated.

5. Accepting the recommendations of the learned Additional Chief Judicial Magistrate the order of the Magistrate framing a charge against the petitioner as well as the subsequent proceedings taken against the petitioner are quashed and the petitioner is discharged. This will, however, not preclude the prosecution from filing a fresh complaint against the petitioner after obtaining proper sanction as required Under Section 39 of the Act, if there is no legal impediment for the filing of such a complaint. The petition is, therefore, allowed.

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