

**Aniruadh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-25-1991

**Reported in :** 1991(1)WLN520

**Judge :** N.K. Jain, J.

**Appeal No. :** S.B. Cr. Revision Peti. No. 189 of 1982

**Appellant :** Aniruadh

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Mr. Manoj Garg

**Judgement :**

**N.K. Jain, J.**

1. This revision petition is directed against the order of learned Addl. Distt. and Sessions Judge, Raisinghnagar dated 11.6.82 whereby the order passed by learned Munsif and Judicial Magistrate, Raisinghnagar dated 17.6.80 was confirmed and the conviction Under Section 25(1)(a) of the Indian Arms Act and sentence of one year's R.I. was maintained.

2. Brief facts which give rise to (his petition are that in pursuance of the information to police dated 24.6.75, by one Salim who was arrested in F.I.R. No. 14/75, that he has given 10 rifles to the man who is sitting at the Bus Stand, on the basis of this

10 rifles and 16 cartridges were recovered from the petitioner on 27.1.75, who was identified by Salim. After arresting the petitioner vide Ex. P. 2, a search memo was prepared and thereupon FIR No 16/75 was registered against the petitioner and Salim. After due investigation and obtaining necessary sanction from the District Magistrate, both the accused were challaned Under Section 25 of the Indian Arms Act, in the court of Munsif and Judicial Magistrate, Raisinghnagar. The accused pleaded not guilty and claimed trial. The prosecution has examined PW 1. Gopala Ram, PW 2 Kansingh and PW 3 Bhanwar Singh. In defence Gopiram was examined as DW 1 and petitioner examined himself. The learned Magistrate after trial found that there is no evidence that Salim sold the ammunition to the petitioner and acquitted him but convicted and sentenced the petitioner as mentioned above. Against this order, the petitioner preferred an appeal which was dismissed by the learned ADJ, Raisinghnagar on 12.6.82. Hence this revision.

3. Mr. Manoj Garg, learned Counsel for the petitioner has submitted that sanction was not properly accorded. He has also submitted that the alleged arms were not proved to be fire arms as no report was called for and further submitted that co-accused Salim is acquitted by the court, so the conviction of the petitioner is illegal and the petition be accepted. He has placed reliance in Nanhey v Stale (1978 Cr. L.J. 1001), Guljar Singh v The State of Maharashtra (1976 Cr. L.J. 205) and Akha Singh v Slate of Raj. (1990 Cr. L.R. (Raj.) 454).

4. Mr. V.S. Choudhary, learned Public Prosecutor has submitted that the accused tried after due sanction and there is sufficient evidence to show that they are arms and recovered from the conscious possession of the petitioner and the trial court after appreciating the evidence has rightly dismissed the appeal, so no interference is called for.

5. I have heard Mr. Manoj Garg, learned Counsel for the petitioner and Mr. V.S. Choudhary, learned Public Prosecutor and perused the record.

6. Under the Arms Act a person can be prosecuted only after the District Magistrate had given the necessary sanction for his prosecution. This sanction is not intended to be nor is an automatic formality. In the instant case sanction Ex. P 4 in on record, which reads as under.

7. It is clear that the learned District Magistrate has accorded sanction after fully applying his mind to the facts and circumstances of the case. In *Nanhey v Slate* (supra), sanction was accorded without considering the evidence on record, so this case is not applicable.

8. As per definition of ammunition and arms given in section 2(1)(b) and section 2(1)(c), in the terms of ammunition which must be ammunition for the purpose of fire arms several items are included which show the range right from rocketry to small balls usable as ammunition which can be ejected and exploded effectively through the mechanism of fire arms. In the inclusive definition even the ingredients of ammunition as the Central Government may by notification in the official Gazette specify are treated to be the ammunitions. In terms of arms, in the essence, if the articles are sharp-edged and deadly weapons, the court may be mere look at it form its opinion and may conclude that it answers the terms of arms. But as per *Guljar Singh v State of Maharashtra* (supra), when the court is not in a position to conclude due to mechanical device and complicated weaponry, the court will examine potentiality of a weapon, to verify the capacity to eject the ammunition by its very design. Unless there is evidence to this effect, the matter should not be allowed to rest on mere visual examination.

9. In the instant case, the petitioner was arrested on 27.1.75 vide Ex. P. 2 by PW 1 Gopalaram at the bus stand and found in his possession a bag, without licence or permit containing 9 rifles and one rifle in his But of 33 bore and 16 cartridges were also found. On each and every rifle a specific range was marked and their make was also mentioned as 'Finland' and 'Pakistan'. There is sufficient evidence that from the mere look at it, one can conclude that it is an arm within the definition and there was no suggestion that the rifles look like arm only but in fact not an arm. The finding arrived at by the courts below is not perverse and the case referred above will not be helpful to the petitioner.

10. In *Akha Singh V State* (supra), the recovery of country made pistol along with two empty cartridges were recovered in the night by the police, but on the basis of evidence of police, recovery was not believed. Under the circumstances, in that case the court held that no evidence was led as to when the police party had in

fact left the police station or not. As per evidence there was contradictions as to whether the police party had left the police station at 6 P.M. and hence the conviction of the petitioner was quashed. But in the case in hand, recovery of 10 rifles and 16 cartridges from the possession of the petitioner is not in dispute. Therefore, the above referred case is not applicable in the circumstances of the present case.

11. In view of the above discussion, I am not inclined to interfere with the order passed by learned Additional Sessions. Judge. However, Mr. Garg, has prayed that the incident is of 27.1.75 and the accused has remained in jail for about 17 days and not useful purpose will be served, if he is sent again behind the bars and submitted that a lenient view may be taken.

12. Mr. Vijay Singh, learned Public Prosecutor has submitted that looking to the gravity of the crime the accused petitioner should not be given any benefit of reducing the sentence.

13. Having considered the respective submissions and of the fact that the petitioner has remained in custody for about 17 days. Keeping in view the afflux of time between the date of the occurrence and pendency of the case, it will not be just and proper to send the accused in jail to serve out the remaining sentence. Under these circumstances, the sentence passed on the petitioner is reduced to the period of his custody which he has already undergone.

14. In the result, I allow this revision petition in part while maintaining the conviction Under Section 25(1)(a) the sentence passed by the courts below against the accused is reduced to the period of his custody. Thus the sentence stands set off. The accused petitioner is already on bail so he need not surrender and his bail bonds are discharged.