

Bheenv Raj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-11-1987

Reported in : 1987(1)WLN241

Judge : Jas Raj Chopra, J.

Appeal No. : S.B. Cr. Misc. Revision Petition No. 174 of 1981

Appellant : Bheenv Raj

Respondent : State of Rajasthan

Judgement :

Jas Raj Chopra, J.

1. This Misc. Petition under Section 482/379 Cr. P.C. has been filed against the order of the learned Munsif and Judicial Magistrate. Nawa, passed on 8-4-1981 in Criminal Case No. 54/1981, State of Rajasthan v. Bheenv Raj.

2. The facts of the case briefly stated are that F.C. Zaffaru Khan, F.C. Chhotmal and F.C. Shahabuddin left Police Station Nawa on 27-2-1981 vide rapet No. 808. While doing 'gasth', they reached Loonva and there they had a night halt. On 28-2-81 at about 6.00 a.m. they were informed by a Mukhbir that Hernia and Mania, are in possession of an unlicensed gun. They, therefore, went towards the house of Hemla and Mania and met them in the house. Hernia was carrying a gun in his

hand. The police party asked them whether they have got any licence, whereupon both the accused replied that they have no licence of this gun. It is alleged that the police party then asked them to accompany them to the police station along with the gun. They, then took them to bus stand Chosia for bearing a bus to police station Nawa. However, F.C. Zaffaru Khan told his companions Chhotmal and Shahabuddin to take the accused persons along with the gun to the police station as he is going to Kunji for some official duty.

3. It is alleged that when they were sitting at the bus-stand, one Bheenvraj came there and enquired from the police party as to why they have arrested Banbagarias, who are very poor persons. He then told that they have been arrested by them in order to extract money from them. He then asked the accused persons to go away from that place and later he caught hold of the collar of Shahabuddin, gave two-three slaps to him and snatched the gun from him and took it away to the Panchayat Bhawan, Shahabuddin followed him and when the other persons of the police party came there, he related to them the entire story. The police personnel enquired from Bheenvraj as to why he has beaten Sahabnddin, where upon he told that how they have entered his area without his permission. He will sis to it that they are transferred from Police Station Nawa. Even the Tehsildar and many of the S.H.Os. are scared of him. However, after exchange of lot of hot words, the police party was successful in taking the gun with them. The report of this incident was lodged at the police station. After investigation, a case against this accused person was challaned on which the learned lower court took cognizance against the accused under Sections 356, 332, 325, 327 and 384 I.P.C. Aggrieved against this order the petitioner Bheenvraj has preferred this Miscellaneous Petition to quash the order of the Magistrate.

4. I have gone through the record of the case. Section 19 of the Indian Arms Act provides that any Police Officer or any other officer specially empowered in this behalf by the Central Government, may demand the production of licence from any person who is carrying any arms or ammunition. Sub-section (2) of Section 19 provides that if the person upon whom a command is made refuses or fails to produce the licence or to show that he is, entitled by virtue of this Act or any other law for the time being in force to carry such arms or ammunition without a licence,

the officer concerned may require him to give his name and address and if such officer considers it necessary, seize from that person the Arms or ammunition which he is carrying. Sub-section (3) of Section 19 of the Arms Act provides that if that person refuses to give his name & address or if the officer concerned suspects that person of giving a false name or address or of tending to abscond, such officer may arrest him without warrant.

5. It is, therefore, clear from the provisions of Section 19 of the Indian Arms Act that if a person is found carrying any arm or ammunition, the police officer has authority to demand from him the licence for carrying that arm or ammunition. It is clear from the FIR that only accused Hernia was carrying a gun and not accused Mania. The police officers were authorised to demand from them the licence of the gun. They knew these two persons by name. They also knew their father's name and the place of their residence. Actually it was on the information of the Mukhbir that they proceeded towards their house and it is not the case that they refused to give their identity and the police officers were only authorised to seize the gun and could not have arrested the accused to take them to the police station, because the situation for arresting the accused persons under Section (3) of Section 19 did not exist. Thus the Act of the police officers to take them into custody, was wrong. They could at best have seized the arm which they were authorised to do under Section (2) of Section 19 of the Arms Act. They even did not prepare the seizure memo. It is, therefore, clear that they had no authority to arrest Hernia and Maina and Bheenv Raj was within his right to rescue them from police custody, and, therefore, no offence under Section 325, I.P.C. is made out against the accused. As the gun was not seized by the Police Officer by preparation regular seizure memo, it cannot be held that it came to their possession in performance of their official duty. If they had taken possession of the gun without the preparation of the seizure memo, it can at best be said that they came into the possession of the gun because it was not objected by the owners carrying the gun. Taking possession of the gun by the Police Officer, without preparation of the seizure memo, cannot amount to due performance of the official duty and so if the gun has been snatched from Shahabuddin, it may amount to an offence under Sections 323, 327 and 384 but prima facie case under Sections 353 and 332 is not made out.

6. I, therefore, partly allow this petition, quash the order of the learned Magistrate so far as it relates to taking cognizance against Bheenv Raj under Sections 332, 353 and 325, I.P.C. I, however, find no infirmity in the order of the learned lower court so far as it relates to taking cognizance against the accused petitioner under Sections 384 and 327, I.P.C. prima facie offence under Section 323, I.P.C. is also made but against the accused. The learned lower court should taken action under Section 323, I.P.C. and proceed according to law. With these directions this miscellaneous petition stands disposed of accordingly.

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