

Dipu Vs. the State

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Court : Kolkata

Decided On : Aug-20-1976

Reported in : 1977CriLJ1508

Judge : P.K. Chanda and ;S. Basu, JJ.

Appellant : Dipu

Respondent : The State

Advocate for Pet/Ap. : Mr. Pal

Judgement :

P.K. Chanda, J.

1. This revisional application has been directed against the order dated 4-3-1975 passed by the learned Addl. Sessions Judge, Nadia in Criminal Appeal No. 33 of 1974 dismissals the appeal against the judgment and order dated 6-12-1974 passed by the Chief Judicial Magistrate Krishnagar, convicting the petitioner and sentencing him to rigorous imprisonment for one year Under Section 25 of the Arms Act and rigorous imprisonment for four years Under Section 27 of the said Act in Trial No. 31 of 1974 (G. RCase 1619/72).

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2. This Court can interfere with the decision of the lower courts in exercise of revisional power only if there is miscarriage of justice due to mistake of law. We cannot reassess the value of the evidence and interfere with a finding of fact merely because we may think that the appreciation of the evidence of the lower courts is wrong and this Court should have reached a different conclusion of fact from what the courts below did,

3. The petitioner was arrested on 2-8-1972 by P. W. 1, Sub-Inspector of Police in connection with the Chapra P. S. Case No. 1 dated 4-7-1972 Under Sections 395 and 397 of the I. P. C. and on the very same date he made a statement to P. W. 1 in which he disclosed that he had kept concealed a sten gun and 39 cartridges in his gama field close to his house and he led P. W. 1 and P. W. 2 to that land and brought out the sten gun and cartridges. The seizure list (Ext. 2) was prepared and it is signed by the petitioner and also by P. Ws. 3, 4 and 5, his co-villagers. P. Ws. 3, 4 and 5 resiled from their statements before the Investigating Officer and alleged that they were not present when the sten gun and the cartridges were recovered. Apart from what he stated about the sten gun and the cartridges kept concealed in the gama field the petitioner also stated that he kept two DBBL Guns in the house of Fakir and when the police party went there during the absence of Fakir the petitioner brought out two DBBL Guns. The relevant seizure list is Ext. 2/1. Both the courts below were prepared to rely on the evidence of P. W. 1 and P. W. 2- the two police officers.

4. Mr. Pal appearing for the petitioner has submitted that the courts below were not justified in relying on the evidence of the two police officers and convicting the petitioner on so serious charges. We are unable to accede to this contention. In *Som Prokash v, State of Delhi*, reported in : 1974 CriLJ784 , the Supreme Court observed :

We are aware of the exaggerated criticisms of the police force as a whole and of the reluctance of the framers of the Criminal P. C. to trust statements recorded by the police investigators but these are, partly at least, the hang-over of the British past.

5. In *Aher Raja Khima v. State of Saurashtra*, reported in : 1956 CriLJ426 , the Supreme Court held ;

The presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude would do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.

6. In *H. P. Administration v. Om Prokash*, reported in : 1972 CriLJ606 the Supreme Court observed :

In an investigation Under Section 157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence is believed.

7. We agree with Mr. Pal appearing on behalf of the petitioner that the entire statement appearing in Ext. 1 could not [go into evidence. Only that portion of the statement that the petitioner would point out the places where the arms and ammunitions were kept was admissible in evidence and not the rest. The appellate court was quite conscious of the legal aspect of the matter. It observed :

Even if it is assumed that the entire statement (Ext. 1) should not have been marked as Exhibit in this case one fails to understand as to how accused Dipu can take advantage of the said fact. Apparently, Ext. 1 contains some statements, in pursuance of which the arms and ammunition in question were recovered by the police. It can, therefore, be said that there is no legal bar to the marking as exhibit at least of those statements in the document (Ext. 1). If that is so, accused Dipu (the appellant in the present appeal) does not and cannot get any benefit, even though the prosecution fails to utilize the entire document (Ext. 1) against him.

8. In view of the above observations it is manifest that the learned Judge arrived at the conclusion excluding the inadmissible portion.

9. An argument has been raised by Mr. Pal to the effect that the appellate court did not consider the fact that the arms and ammunitions were found in an open land not fenced on any side and in the house of acquitted accused Father (Fakir ?) and

these facts are not sufficient to fix the petitioner with the act of concealment as the court overlooked the fact that other persons had as much access to the land and the house, Mr. Mukherjee appearing on behalf of the State has, on the other hand, submitted that this point was not canvassed before the first appellate court. It appears from the judgment of the appellate court that this point was not really canvassed there. This Court in Maniruddin's case, (1913) ILR 40 Cal 41 : 13 Cri LJ 482 held that the High Court while disposing of revisional application may entertain a point not taken in the lower court.

10. The theory of exclusive possession of the place where stolen goods are found is not quite applicable in respect of an offence under the Arms Act in view of the provisions of Section 35 of the Act which lay down criminal responsibility on all persons for any arms or ammunition in respect of which any offence under this Act has been committed are or is found in any premises, vehicle or other place in joint occupation or under the joint control of such person in respect of whom there is reasonable belief that he was aware of the existence of the arms and ammunitions in the premises, vehicle or other places shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or being committed by him. We are not unmindful of the fact that in order to sustain the conviction in this case on the ground that the accused was in possession of unlicensed arms or ammunitions, it must be shown that the possession was a conscious possession accompanied by necessary mens rea or intention to possess them. Wolff, J. in *Mc Caskell v. Marzo*, 46 WLR 64, observed :

If I say I am in possession of a thing that seems to indicate that I have it in my custody, control or power, while if I say I possess a thing something more than a mere right' of custody or control seems to be intended.

11. In *Martin Estates Co. Ltd. v. Watt and Hunter*, (1925) NI 79 at p. 85, Moore, L. J. observed :

Possession is a word that perhaps like ft great many words, is incapable of an entirely precise and satisfactory definition. Possession of a house is essentially different from possession of a gold watch One has to look at the property possessed.

12. In *R. v. Sleep*, (1861) Le & Ca 44 at p. 57, Wills, J., observed as follows :

Possession does not consist merely in manual detention. Suppose I require a bystander to hold anything for me, it shall remain in my possession.

13. The word possession among others connotes control over the object. In other words, possession as an element of crime may relate to actual control. Control must in this context mean power or ability to regulate the keeping or possession or use or disposal of the weapon. All the arms and ammunitions in the present case were in perfect working condition. It does not matter whether they belong to the petitioner or to anybody else. The clinching question is whether the appellant who pointed out the arms and ammunitions had not himself hidden them. As earlier noticed the petitioner while in police custody made a statement and led the police party to the land and the house of Fakir. The hypothesis that someone told the accused appellant of the place of secretion is displaced by the very knowledge displayed, for it is unnatural that such details of secretion would be conveyed to the petitioner out of mere idle curiosity. That apart this hypothesis is totally vacated as the appellant had not revealed the name of the person who has imparted to him the precise information, for it is improbable to believe that the accused was prepared to lose his liberty for the sake of his friendly obligation to keep it secret, nor is it reasonable to expect any sense of moral obligation in one who has not moved the authorities in the matter till he was himself suspected in connection with the dacoity case and questioned. Any hypothesis that he managed to see any unknown criminal hide the arms and ammunitions must be ruled out. The house of Fakir is in a different village and at some distance too, The criminals do not secret things unless they make sure that they are not being observed. If the petitioner per chance saw an unknown criminal hide the arms and ammunitions the pertinent question would be why he did not bring the matter to the notice of the authority like an honest man. The conditions under which these arms and ammunitions were recovered show that they were kept and secreted with care and as such mens rea was also there. The Punjab High Court in the case of *State v. Mehinder Singh*, with reference to an offence Under Section 19-F of the old Act observed :

The evidence of the various witnesses shows that the accused made a statement to the police and also pointed out the place where the pistol was and brought it out. This evidence, in my opinion, is sufficient to prove the control.

14. The appellant hiding the arms and ammunitions in the facts and circumstances of the case must be held to be in possession of the same. The explanation the petitioner had given while he was examined Under Section 342, Cr. p. C. is no explanation at all and in fact it is false. In Mohan Lai v. State of Uttar Pradesh, : 1974 CriLJ800 the Supreme Court observed :

Indeed among the circumstances which go against the accused's innocence is the falsity of the plea he put forward. It is not illegal to take into consideration this circumstance also, if there are other compelling materials bringing home the guilt of the accused.

15. The offences Under Sections 25 and 27 of the Arms Act are completed as soon as it is shown that the petitioner had such arms under his possession which as earlier pointed out means the visible possibility of exercising control over a thing its character admits of. The arms and ammunitions in question were not known to the police. What was discovered in the present case is a material fact and lends assurance that the information given to the police which is admissible Under Section 27 of the Evidence Act was true.

16. In view of the discussion made above, the instant application must fail. The revisional application is rejected. The Rule stands discharged. The petitioner do surrender to his bail bond to serve out his term of imprisonment.

Sudhamay Basu, J.

17. I agree.