

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 458 of 2006**

- Budheshwar, S/o Atma Ram Dhobi, Age about 45 years, R/o Village Sarva, PS Kasdol, District Raipur (CG)

---- Petitioner

Versus

- State Of Chhattisgarh, Through District Magistrate, Raipur (CG)

---- Respondent

For Applicant

Mr. YC Sharma, Advocate

For Respondent /State

Mr. Bhaskar Pyasi, Panel Lawyer

S.B. : Hon'ble Mr. Justice Prashant Kumar Mishra**Judgment On Board****23/3/2018**

1. Heard.
2. The applicant's conviction under Section 324 of IPC and Section 25 of the Arms Act, 1959 (in short "the Act, 1959") and sentence of RI for one year for each of the offence and fine of Rs.1000/- & Rs.200/- respectively, for causing injuries by means of sword to injured Kannilal, as rendered by the trial Magistrate, has been affirmed by the Appellate Court.
3. The short legal question, arising in this criminal revision for consideration, is "whether conviction under Section 25 of the Act, 1959 is sustainable in absence of any evidence that the sword carried by the applicant was in the category of

'prohibited arms' as has been specified in the Notification issued by the State Government under Section 4 read with Section 25(1B) (b) of the Act, 1959?"

4. Bare minimum facts necessary to dwell on the above issue is that on 17.6.1994, at about 7:30 p.m., injured Kannilal had gone towards the village pond and was in conversation with Chhatrapal and Samaylal. At that point of time, the accused persons reached there, raised altercation and Buddheshwar inflicted repeated blows on the person of Kannilal by means of sword, which he was carrying from the beginning. The other accused persons also assaulted Shatrughan and Bharat. Since the Appellate Court has acquitted accused Rangeela for the offence under Section 323/34 of IPC and has modified the jail sentence of accused Harshram for the offence under Section 323 of IPC from RI for 4 months to fine of Rs.1000/-, this revision application has been preferred by accused/applicant Buddheshwar only.

5. Applicant Buddheshwar has been convicted for carrying sword, a prohibited arm, and causing injuries to Kannilal. However, at the same time, the applicant has been acquitted of the charge under Section 27 of the Act, 1959 on the ground that there is no mention of the ingredients for attracting offence under Section 27 of the Act, 1989, therefore, the applicant is entitled to be acquitted for the said offence.
6. Reverting back to the legal issue, it may be apt to notice the basic difference between a firearm and an arm in the scheme of

the Act, 1959. A firearm of any description cannot be acquired, possessed or carried, except under a license, as provided under Section 3 of the Act. However, there is no such complete embargo in respect of arms, for which, Section 4 of the Act, 1959 provides that "if the Central Government is of opinion that having regard to the circumstances prevailing in any area, it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made thereunder".

7. It is evident that a firearm has necessarily to be an arm but an arm is not necessarily a firearm. An arm designed or adapted to discharge a projectile or projectiles of any kind by the action of explosive or other forms of energy, is a firearm vide clause (e) of Section 2 of the Act, 1959. The contravention of Section 3 in respect of firearm and of Section 4 in respect of arm, both have been made punishable under Section 25(1B) of the Act, 1959. Both the provisions are reproduced hereunder :

"25...---(1B) whoever-

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or.....

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.”

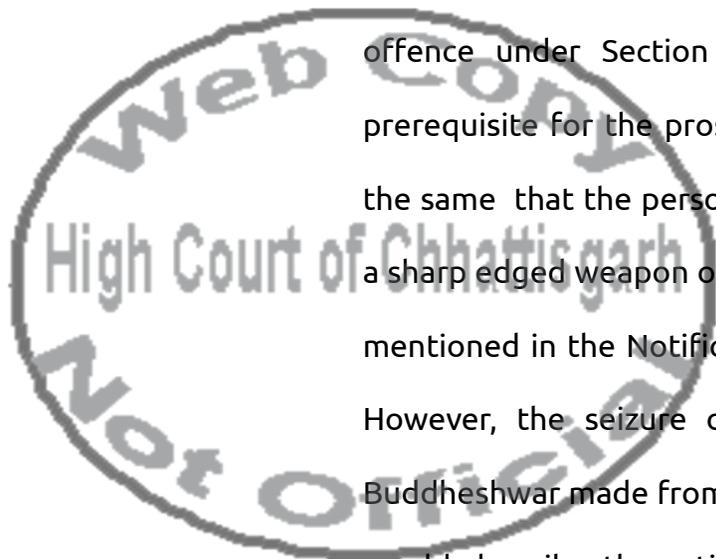
8. Section 43 of the Act, 1959 confers power to the Central Government to direct by notification in the Official Gazette that any power or function exercisable or performable by it under the Act other than the power under Section 41 (power to exempt) or power under Section 44 (power to make rules) may be exercised or performed by the State Government. It was under this delegate power, the State Government has issued Notification No.6312-6552-II-B(i) dated 22.11.1974, which is set out under :

“Where as the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expedient in the public interest that the acquisition possession and carrying of sharp edged weapons with a blade more than 6 inches long 2 inches wide and spring actuated knives with a blade of any size in public places should also be regulated.

Now therefore in exercise of the powers conferred by section 4 of the Arms Act, 1959 (No.54 of 1959) read

with the Government of India, Ministry of Home Affairs, Notification No. G.S.R. 1309, dated the 1st October, 1962, the State Government hereby directs that the said section shall apply with effect from the date of publication of this Notification in the "Madhya Pradesh Gazette" to the whole of the State of Madhya Pradesh in respect of acquisition, possession or carrying of sharp edged weapons with a blade more than 6 inches long or 2 inches wide and spring actuated knives with a blade of any size in public places only."

9. In view of the Notification, in order to attract conviction for the offence under Section 25(1B) (b) of the Act, 1959, it is prerequisite for the prosecution to submit evidence and prove the same that the person charged for the offence was carrying a sharp edged weapon of the same measurement or above, as is mentioned in the Notification issued by the State Government. However, the seizure of sword allegedly used by applicant Buddheshwar made from injured Shatrughan Verma vide Ex.P/3. would describe the article as 'old sword stained with blood cow-dung, having wooden grip'. There is no separate document drawing the figure with length and width of the weapon. The IO has sent this weapon to the Assistant Surgeon vide Ex.P/9A raising a query as to whether the injuries sustained by Kannilal can be caused by the seized sword. However, once again, in this document also, the length and width of the weapon has not been mentioned. Thus, the entire record does not contain any document or even oral statement of any of the witnesses that the sword allegedly carried and used by the applicant was more than 6 inches long or 2 inches wide, which is the measurement



specified in the Notification dated 12.11.1974.

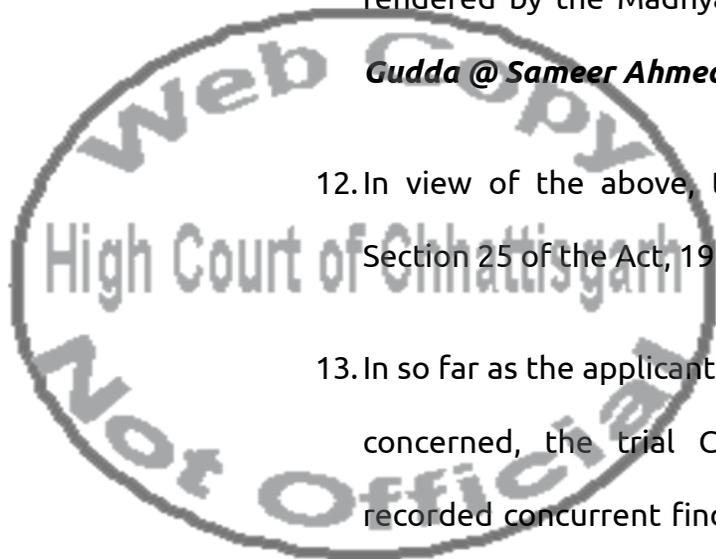
10. In absence of any evidence or proof that the applicant had in his possession or was carrying arms of such class or description, as has been specified in the Notification issued by the State Government, the facts and requisites constituting an offence under Section 25(1B) (b) of the Act, 1959, has not been established to be committed by the applicant.

11. In taking the aforesaid view, I am fortified by the judgment rendered by the Madhya Pradesh High Court in the matter of ***Gudda @ Sameer Ahmed Vs. State of M.P. , 1997 (2) MPLJ 117.***

12. In view of the above, the conviction of the applicant under Section 25 of the Act, 1959, is set-aside.

13. In so far as the applicant's conviction under Section 324 of IPC is concerned, the trial Court and the Appellate Court have recorded concurrent finding based on the ocular version of the injured witnesses that the applicant has caused the injuries. Therefore, the said finding of fact cannot be disturbed while exercising revisional jurisdiction under Section 397 read with Section 401 of Cr.PC.

14. Learned counsel for the applicant has tried to demonstrate that the finding is perverse, however, after meticulous examination of the evidence, I am not persuaded to hold that the finding in respect of the applicant's guilt under Section 324 of IPC suffers from any perversity.

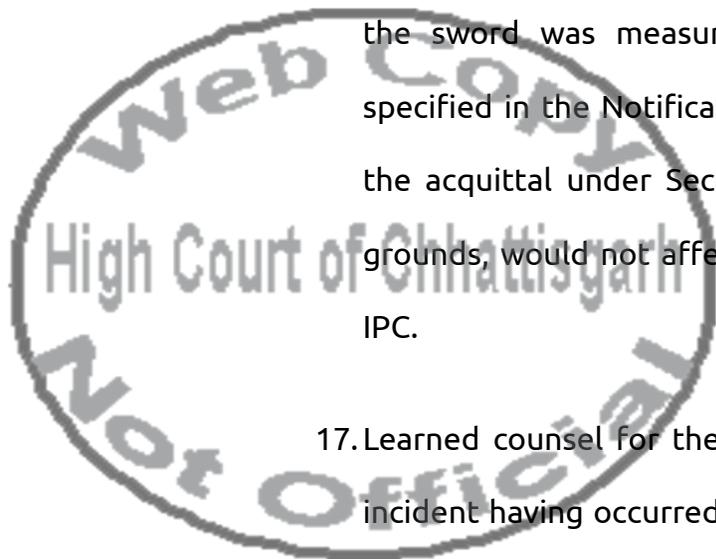


15. It is also argued by learned counsel for the applicant that once conviction under Section 25 of the Act, 1959, has been set-aside, the applicant cannot be held guilty for offence under Section 324 of IPC, because the injuries were allegedly caused by a sword, for which, the conviction under Section 25 has already been set-aside.

16. The applicant's conviction under Section 25 of the Act, 1959 has been set-aside on technical grounds and not with a finding that the applicant was not carrying any sharp edged weapon. Even if the sword was measuring less than the length and width specified in the Notification, it can still cause injury, therefore, the acquittal under Section 25 of the Act, 1959, on technical grounds, would not affect the conviction under Section 324 of IPC.

17. Learned counsel for the applicant would now submit that the incident having occurred about 24 years back and the applicant having already suffered about 4 months of jail sentence, the period of jail sentence served by him may be reduced to the period already undergone.

18. It is true that the incident had occurred about 24 years back. At that point of time, the applicant was aged about 45 years, therefore, his present age would be about 70 years. At this stage, sending the applicant to jail once again after 24 years may not be appropriate. Therefore, since the applicant has already suffered 4 months of jail sentence, ends of justice would be served if the sentence awarded for offence under Section



324 of IPC is reduced to the period already undergone.

19. Accordingly, the criminal revision is allowed in part. The applicant's conviction under Section 25 of the Act, 1959 is set-aside. His conviction under Section 324 of IPC is maintained, however, the sentence of RI for one year is reduced to the sentence already undergone. The sentence of fine is not disturbed.

Sd/-

Judge

(Prashant Kumar Mishra)

