Swami Dayal vs State on 26 April, 1952

Equivalent citations: AIR1953ALL353, AIR 1953 ALLAHABAD 353

ORDER

Beg, J.

1. The applicant Swami Dayal was employed as a, gaternan at a Eailway level crossing at Gunti No. 251/C near Motiganj Railway Station. During the night between 15 and 16--1949, a police party headed by the Circle Inspector Shri Sukhbir Singh went in search of some dacoits to village Nibhwa. They had an encounter with the dacoits who fled away and were chased. In the early hours of the morning the police party happened to pass by the outpost where the accused Swami Dayal was posted. The Circle Inspector made a search of the room occupied by the accused and recovered a country made pistol (EX. II) from there in the presence of the search witnesses. Thereupon the applicant Swami Dayal was prosecuted under Section 19 (f), Arms Act.

2. The accused admitted that the room from which the pistol was alleged to have been re-covered belonged to him. According to his state, ment, nothing incriminating was recovered from the room and the case was launched against him as a result of his enmity with the police.

3. The trial Court found the accused guilty but in view of the fact that the pistol recovered was not in full working order passed a sentence of only two months' rigorous imprisonment with a fine of Rs. 25 or in default rigorous imprisonment for one month:

4. The accused wont in appeal before the learned Sessions Judge of Gonda, who upheld the judgment of the trial Court and maintained the conviction and sentence of the accused.

5. The accused has come in revision to this Court and the learned counsel appearing for him has urged three points in his favour. The first point argued by him is that the pistol itself was not quite fit for use and, therefore, it could not be an "arm" within the definition of that term in Section 4, Arms Act. He invited my attention to the statement in the recovery list that the handle of the pistol was partly rotten and both its triggers were out of order and a string was tied to the barrel in two places. The finding of the trial Court regarding the condition of the pistol is that it was partly broken and unworkable. Under the above circumstances his argument was that admitting that the pistol was recovered, it had ceased to be an arm under the Arms Act. The evidence indicates that the pistol had not lost its character as pistol. With a certain amount of repair it could easily be used as an arm. Under, these circumstances I am of opinion that the article recovered should be considered to be an article for which a licence was needed and the possession of the same would be punishable under the Arms Act.

In this connection the learned counsel relied strongly on Queen v. Sidappa, 6 Mad. 60 (F.B.), a Full Bench decision of the Madras High Court, in which it was laid down that a gun rendered unserviceable by the loss of the trigger does not fall within the definition of "arms" in Section 4, Arms Act, 1878, and that the possession of such a weapon without a license is no offence. This ruling would no doubt to a certain extent support his contention. I, however, find that the law laid down in this ruling was subsequently reconsidered by a Full Bench of the Madras High Court reported in Queen-Empress v. Jayarami Reddi, 21 Mad. 360 (F.B.) and the view taken in the previous case was dissented from. According to the view taken in this case the test in such a case is not so much whether the particular weapon is serviceable as a fire arm but whether it has lost its specific character and has ceased to be a fire arm. I respectfully agree with the view expressed in this ruling. If a contrary view were to be held, it will enable any person wanting to circumvent the provisions of law to take out some small part like a screw from an arm and keep the arm in his possession and it would not be possible to convict him merely on the ground that the instrument itself was unworkable at the time. The first point raised by the learned counsel, therefore, appears to have no force.

6. The second point argued by the learned counsel was that the provisions of Section 103, Criminal P. C., with regard to search were not strictly complied with as the witnesses were not the wit-nesses of the locality. The statement of the Circle Inspector showed that he had proceeded from the police station on information that a gang of dacoits had collected in the cabin of Swami Dayal gate-keeper for the purpose of committing dacoity.

When he reached the spot, he came to know that the gang had already left the room of Swami Dayal and were on the move for the purpose of committing dacoity. He traced them, surrounded them and apprehended a number of them. Some of them confessed their crime. The Sub-Inspector came back and immediately took the search of the room of Swami Dayal and recovered this incriminating article from the and place. It is evident that under the above circumstances the Sub-Inspector had no time to go to the village or to the station and to collect men from there for the purpose of effecting a search. In cases where such a raid is contemplated, it is usual for the police officer to take witnesses along with him so that they may serve as search witnesses when the occasion arises. Under such circumstances if he goes to look for independent witnesses, the very purpose of search might be defeated. A search is not vitiated by non-compliance with the provisions of Section 103, Criminal P. C., a breach of which will only put the Court on guard and incline it to scrutinise evidence of witnesses more closely. The effect of such irregularity will, however, depend on the circumstances of each particular case. In view of the special circumstances and the difficulty in which the Circle Inspector was placed, I think the conduct of search by him with the aid of the search witnesses available to him at the time cannot be characterised to be in any way improper; and cannot, in any case, have the effect of sweeping away the results of such a search. The search appears to me to be a genuine one.

7. The third point raised by the learned counsel is that the room in question was not in exclusive possession of the accused. In this connection he has relied on Chitta v. Emperor, 1947 oudh W. N. 82. This point was not taken in the grounds of revision. Even on merits I do not think that it can bear scrutiny for a moment. The accused himself has admitted in his statement that the cabin

belonged to him. He has not stated that, any one else was living with him at the time. Under these circumstances I am of opinion that this point also has no force.

8. Having heard learned counsel at length I am of opinion that this revision has no substance. It is accordingly dismissed.