

Supreme Court of India

Jagjit Singh vs State Of Punjab on 10 May, 1994

Equivalent citations: 1993 AIR 2448, 1994 SCC Supl. (1) 65

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

JAGJIT SINGH

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 10/05/1994

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

MOHAN, S. (J)

CITATION:

1993 AIR 2448

1994 SCC Supl. (1) 65

JT 1993 Supl. 518

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal is directed against the decision of the Designated Court, Bhatinda dated 19-11-1992 whereunder he recorded a conviction under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and sentenced the appellant to suffer rigorous imprisonment for five years and to pay a fine of Rs 500 and in default of payment of fine to suffer rigorous imprisonment for two months. The prosecution case was that the appellant was found with a pistol and two cartridges in the notified area in the State of Punjab.

2.The only short question which we are required to consider is whether the mere finding of an article described as pistol and cartridges is sufficient to bring home the charge under Section 5 of the Act. That provision states :

"5. Possession of certain unauthorised arms, etc., in specified areas.- Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category 1 or Category III(a) of Schedule 1 to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorizable in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

3. Revolvers and pistols fall within Category III(a) of Schedule 1 Arms Rules, 1962. However, the prosecution has to establish that the article found from the possession of the appellant is of that description and that the cartridges were in fact live cartridges. Any article with resemblance of revolver or a pistol cannot attract the provision. What is necessary is to also show that that revolver or pistol was in fact a lethal weapon in the sense that it was in working order and was not a toy gun or the like. For that it was necessary for the prosecution to lead some evidence and not merely go by the description that the weapon was a .12 bore pistol. The prosecution witnesses were all police personnel who would ordinarily be able to identify a .12 bore pistol but in addition thereto there must also be evidence to show that the weapon was in working order. If there was evidence led by prosecution to show that these witnesses had tested the weapon, it would have been a different matter. Even in the absence of the evidence of a ballistic expert which would be the most appropriate evidence in such cases, we do not find any evidence on record to show that the prosecution witnesses had tested the weapon and found it to be in working order. Same is the case with the cartridges in question. In the circumstances, we are afraid that the prosecution cannot be said to have brought home the guilt or satisfied the strict test required in such cases for convicting the accused.

4. In the result, we allow this appeal, set aside the order of conviction and sentence and acquit the appellant of the charge levelled against him. He will be set at liberty at once unless required in any other matter.