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SUPREME COURT OF INDIA

Before: Dr Dhananjaya Y Chandrachud, Indu Malhotra & Indira Banerjee, JJ.

Criminal Appeal Nos 750-751 of 2020

Decided on: 16.11.2020

(Arising out of SLP (Crl) Nos 4292-4293 of 2020)

Parveen

Appellant(s)

Versus

State of Haryana

Respondent

For Petitioner(s):

Ms. Tina Garg, AOR, Mr. M.K. Ghosh, Adv., Mr. Rohit Dutta, Adv.

For Respondent(s):

Mr. Vishal Mahajan, AAG, Dr. Monika Gusain, AOR

Code of Criminal Procedure, 1973 (2 of 1974), Section 397, 401 – Constitution of India, Article 21 -- Arms Act, 1959 (54 of 1959), Section 25 -- Conviction under Arms Act – Dismissal of revision in default – Sustainability of -- Held, High Court was manifestly in error in rejecting the revision in default, on the ground that the appellant's advocate had remained absent on the previous four occasions -- Since the revision before the High Court arose out of an order of the conviction under the Arms Act, the High Court ought to have appointed an Amicus Curiae in the absence of counsel -- Liberty of a citizen cannot be taken away in this manner – Appeal allowed, Revision restored to the file of the High Court.

(Para 7,8)

ORDER

1. Leave granted.

2. By a judgment dated 12 January 2015, the appellant has been convicted for an offence under Section 25 of the Arms Act by the Judicial Magistrate First Class, Rohtak in Criminal Case No 85-2 of 2013 and has been sentenced to suffer simple imprisonment for a period of three years.

3. Criminal Appeal No 24 of 2015 was filed against the judgment of conviction before the Additional District and Sessions Judge, Rohtak. During the pendency of the appeal, the appellant was admitted to bail. The Additional Sessions Judge upheld the conviction while dismissing the appeal on 10 July 2017.

4. The appellant filed a revision, CRR No 1316 of 2018, before the High Court of Punjab & Haryana. During the pendency of the revision, the appellant was enlarged on bail on 16 April 2018. The revision was filed before the High Court through the Legal Services Authority, Rohtak. The High Court by its order dated 11 February 2020, dismissed the revision in the absence of the appellant and his advocate, observing as follows:

“Perusal of file shows that this revision has been taken on board six times, including today. On four occasions, none came forward to

represent the petitioner in the span of approximately one year and four months. Therefore, it can safely be inferred that petitioner or his counsel is no more interested in pursuing this revision.

Dismissed for want of prosecution.

Learned Chief Judicial Magistrate, Rohtak, is directed to issue warrants of arrest of the petitioner to undergo remaining sentence.

A copy of this order be sent to learned Chief Judicial Magistrate, Rohtak, for compliance."

5. On 16 July 2020, the High Court dismissed the application for restoration of the revision on the ground that no ground for restoration has been established.

6. Notice was issued by this Court on 12 October 2020. In pursuance of the notice, Mr Vishal Mahajan, learned Additional Advocate General for the State of Haryana has appeared on behalf of the first respondent – State.

7. The High Court, in our view, was manifestly in error in rejecting the revision in default, on the ground that the appellant's advocate had remained absent on the previous four occasions. Since the revision before the High Court arose out of an order of the conviction under the Arms Act, the High Court ought to have appointed an Amicus Curiae in the absence of counsel, who has been engaged by the Legal Services Authority, Rohtak. The liberty of a citizen cannot be taken away in this manner.

8. In the circumstances, we are of the view that it would be appropriate to allow this appeal and set aside the impugned orders of the High Court dated 11 February 2020 and 16 July 2020. CRR No 1316 of 2018 is restored to the file of the High Court. Since during the pendency of the Special Leave Petition, the appellant was admitted to bail by this court and the appellant was on bail during the pendency of the revision before the High Court, the order enlarging the appellant on bail shall continue to remain in operation pending the disposal of the revision by the High Court. The appellant shall cooperate in the disposal of the revision.

9. The appeals are accordingly disposed of.

10. Pending applications, if any, stand disposed of.

Appeal allowed.
