NC: 2025:KHC:7208
CRL.RP No. 1431 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 1431 OF 2016

BETWEEN:

SRI K M MANJUNATH
S/O LATE HUCHAIAH,
AGED 46 YEARS,
R/AT GUPTASHETTY HALLI,
SATHIHALLI VILLAGE, ALDUR
CHIKMAGALUR DISTRICT – 576 109.

…PETITIONER

(BY SRI. V D RAVIRAJ, ADVOCATE)

AND:

STATE OF KARNATAKA
BY ALDUR P.S.CHIKMAGALUR DISTRICT,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE – 560 001.

…RESPONDENT

(BY SRI. K NAGESHWARAPPA, HCGP)

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION PASSED IN C.C.NO.851/2012 DATED 21.10.2015 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC AT CHIKMAGALURU, CONFIRMED IN CRL.A.NO.151/2015 DATED 26.08.2016 ON THE FILE OF PRL. DIST. AND S.J., AT CHIKMGALURU.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

ORAL ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order on sentence dated 21.10.2015 in C.C.No.851/2012 on the file of the Principal Civil Judge and JMFC, Chikkamagaluru and its confirmation judgment and order dated 26.08.2016 in Crl.A.No.151/2015 on the file of the Principal District and Sessions Judge at Chikkamagaluru, seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused is convicted for the offences punishable under Section 25 of the Arms Act, 1959 (for short 'the Act').

2. The ranks of the parties would be considered henceforth as per their rankings in the Trial Court for convenience.

Brief facts of the case:

3. It is the case of the prosecution that on 08.02.2012, at about 01.30 p.m., PW.1 – Mr. A.M. Saleem, Police Sub Inspector of Aldur Police Station, had received a credible information that Manjunath, r/o. Sathihalli village, illegally possessed SBML Gun and it was being carried out

without having any valid license in the Sathihall forest area for the purpose of hunting the wild animals. Based on the said reliable information, PW.1 along with his staff went to the forest area and found that the accused was coming from the opposite side carrying gun on his shoulder and also by holding a plastic bag. On seeing PW.1 and his staff, the accused tried to escape, however, he fell down and sustained injuries on his right hand. PWs.1 and 4 to 7 chased him and apprehended him.

4. On enquiry, the accused failed to produce the license for having possessed the said gun and other articles. Therefore, PW.1 recovered the said SBML gun with ramrod and also a plastic tin containing black gunpowder, plastic tin containing 101 lead shots, snuff tin containing 33 percussion caps, coconut coir and also plastic bag. The said items have been seized as per Ex.P3. After conducting the investigation, submitted the charge sheet against the petitioner/accused for the offences punishable under Section 51 of the Wild Life (Protection) Act 1972 and Section 3 r/w Section 25 of Arms Act, 1959.

5. During the course of the trial, the prosecution in all examined 11 witnesses as P.Ws.1 to 11 and got marked, in all, 8 documents as Exs.P1 to P8 and also got marked 5 material objects as M.Os.No.1 to 5. The Trial Court after conducting the trial, opined that the accused is found guilty of the offences stated *supra* and passed the judgment of conviction and order on sentence. Being aggrieved by the said judgment of conviction, the accused preferred an appeal before the Appellate Court. The Appellate Court dismissed the appeal by confirming the judgment of conviction. Being aggrieved by the same, the petitioner has preferred this revision petition seeking to set aside the concurrent findings.

6. Heard Sri. V.D. Raviraj, learned counsel for the petitioner and Sri.K.Nageshwarappa, learned High Court Government Pleader for the respondent – State.

7. It is the submission of the learned counsel for the petitioner that the Courts below rendered the conviction for the offences stated *supra*, which is contrary to the evidence on record.

8. It is further submitted that the Courts below in spite of mahazar witnesses have turned hostile and not supported the case, recorded the conviction on the ground that the accused had possessed the weapon, which is against to the evidence on record and such appreciation has to be set aside.

9. It is further submitted that the Trial Court acted upon the evidence of the official witnesses though they are interested witnesses to the incident. When the evidence of interested witnesses is not corroborated with the evidence of independent witnesses, acting upon the evidence of interested witnesses and rendering the conviction which appears to be not only erroneous, but it is illegal. Therefore, the conviction rendered by the Courts below is required to be set aside. Making such submissions, the learned counsel for petitioner prays to allow the petition.

10. Per contra, the learned High Court Government Pleader for the respondent – State vehemently justified the concurrent findings and he further submitted that the findings of the Trial Court and the Appellate Court in

respect of possession of the SBML gun has been proved by the evidence of official witnesses. Therefore, the conviction rendered by the Courts below is justified.

11. It is further submitted that as the accused had not produced any document to show that he had a valid license to possess the said gun, obviously, there is a contravention to the provisions under Section 3 r/w Section 25 of the Arms Act. Hence, the findings of the Courts below in rendering the conviction are appropriate and proper. The petitioner has not made out different grounds to set aside the order of the Courts below and hence, the revision petition may be dismissed. Making such submissions, learned High Court Government Pleader prays to dismiss the revision petition.

12. Having heard the learned counsel for the respective parties and also perused the findings of the Courts below, it is necessary to have a cursory look upon the evidence of all the witnesses.

13. PW.1 being the complainant, has supported the case of the prosecution.

14. PWs.2 and 3 are the independent seizure mahazar witnesses. They have turned hostile and not supported the case of the prosecution.

15. PWs.4 to 7 are the witnesses who accompanied the complainant and supported the case.

16. PWs.8 and 10 are the Investigating Officers. They have supported the case.

17. PW.9 who was working as the District Magistrate, sanctioned the permission to prosecute the case.

18. On reading the evidence of PWs.2 and 3, they have turned hostile and not supported the case of the prosecution in respect of recovery of the material objects from the possession of the accused. Despite cross-examination by the State, nothing has been elicited to support the case of the prosecution.

19. Though the Trial Court relied on the judgment of the Hon'ble Supreme Court in the case of ***Pramod Kumar v. State (GNCT) of Delhi***[1] and opined that merely because independent witnesses have turned hostile, that itself is not a ground for acquittal and the evidence of the police

[1] (2013) 6 SCC 588

witnesses need not be treated with distrust, if the testimony of the said police witnesses appears to be reliable and trustworthy and the Court acted upon the evidence of police witnesses, the fact remains that, except these two witnesses, none of the witnesses are the independent witnesses who witnessed the incident.

20. The facts of the said case are slightly different from the facts of the present case. In the present case, the accused stated to be coming from opposite direction to the police officials by holding the fire arm and a plastic bag in his hand. They stated to have apprehended him and seized the weapon. However, in such circumstances, the evidence of independent witnesses assumes greater significance. If the independent witnesses failed to support the case of the prosecution, obviously, the Court ought not to have acted upon the evidence of the interested witnesses. In other words, if the prosecution fails to prove the possession of fire arm, conviction in respect of the above said provisions ought not to have been recorded. However, the Courts below have failed to appreciate the facts and circumstances and recorded the

conviction which, in my considered view, is erroneous and the same is liable to be set aside.

21. In the light of the observation made above, I proceed to pass the following:

ORDER

(i) The Criminal Revision Petition is *allowed.*

(ii) The judgment of conviction and order of sentence dated 21.10.2015 passed in C.C.No.851/2012 by the Principal Civil Judge and JMFC, Chikkamagaluru and the judgment and order dated 26.08.2016 passed in Crl.A.No.151/2015 by the Principal District and Sessions Judge, Chikkamagaluru are set aside.

(iii) The petitioner is acquitted for the offence punishable under Section 25 of the Arms Act, 1959.

(iv) Bail bonds executed, if any, stand cancelled.

Sd/-
(S RACHAIAH)
JUDGE

Bss
List No.: 1 Sl No.: 33