STATE OF M.P. A

v.

AYUB KHAN

(Criminal Appeal No. 1324 of 2012)

AUGUST 29 , 2012 B

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

ARMS ACT, 1959:

s.25(1)(a) - Unauthorised possession of arms - Punishment - Held: Proliferation of arms and ammunition, whether licensed or not, in the country disrupts the social order and development, vitiates law and order situation, directly contributes towards lethality of violent acts which needs to be curbed - Taking into consideration all these aspects, including the national interest and safety of the citizens, the Legislature in its wisdom has prescribed a minimum mandatory sentence (imprisonment for a term 'not less than three years' - Once the accused was found guilty of the offence, he has necessarily to undergo the minimum mandatory sentence, prescribed under the Statute - Law enforcing agencies and courts should not treat such crimes lightly - High Court and the courts below have committed a serious error in not awarding the minimum mandatory sentence prescribed - Orders of sentence passed by High Court as well as the courts below are set aside - Respondent-accused has to undergo a minimum period of three years sentence as prescribed u/s 25(1)(a) and also with a fine of Rs.5000/-. C D E F

The instant appeal was filed by the State against the judgment and order of the High Court by which it upheld the conviction of the respondent u/s 25(1)(a) of the Arms Act, 1959 for being in possession of a country made gun with 2 round bullets and 50 gms explosive, without G

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A licence, but reduced the sentence of one year's RI and a fine of Rs.100/- imposed by the trial court and upheld by the appellate court, to the period already undergone (i.e. 7 days) with a fine of Rs.5000/-.

B Allowing the appeal, the Court

HELD: 1. Proliferation of arms and ammunition, whether licensed or not, in the country disrupts the social order and development, vitiates law and order situation, directly contributes towards lethality of violent acts which C needs to be curbed. Legislature, in its wisdom, has fixed a mandatory minimum sentence for certain offences - keeping, possessing arms and ammunition is a serious offence - which shall not be less than three years. A person who is found to be in possession of country D made barrel gun with two round bullets and 50 grams explosive without licence, must in the absence of proof to the contrary be presumed to be carrying it with the intention of using it when an opportunity arises which would be detrimental to the people at large. Once the E accused was found guilty of the offence u/s 25(1)(a) of the Arms Act, he has necessarily to undergo the minimum mandatory sentence, prescribed under the Statute. Keeping in view the safety of the citizens, the national security, and integrity and unity of the country, the law F enforcing agencies and the courts should not treat such crimes lightly. [para 2 and 10] [429-E-F; 433-A-D]

1.2 The High Court and the courts below have committed a serious error in not awarding the minimum mandatory sentence prescribed under the Statute. Error G is apparent on the face of the High Court's order. The High Court has confined the sentence to the period the accused was in custody stating that he had already served substantive period of jail sentence. The accused was in custody only for seven days i.e. from 14.9.05 to H 20.9.05. Thus, the High Court could not have reached a

finding that the accused had served the substantive period of jail sentence. The orders of sentence passed by the High Court as well as the courts below are set aside and it is ordered that the respondent-accused has to undergo a minimum period of three years sentence as prescribed u/s 25(1)(a) of the Arms Act and also with a fine of Rs.5000/-. [para 8-9 and 12] [431-G-H; 432-A-B; 433-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1324 of 2012.

From the Judgment & Order dated 15.01.2009 of the High Court of Madya Pradesh, Bench at Gwalior in Criminal Revision No. 472 of 2008.

Sunny Chaudhary, C.D. Singh for the Appellant.

Yogesh Tiwari, Vikrant Singh Bais for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. Proliferation of arms and ammunition, whether licensed or not, in the country disrupts the social order and development, vitiates law and order situation, directly contributes towards lethality of violent acts which needs to be curbed. We are sorry to note the law enforcing agencies and to certain extent the courts in the country always treat the crimes lightly without noticing the havoc they can create to the ordinary peace loving citizens of this country and to the national security and the integrity and the unity of this nation. We may indicate, the case in hand shows, how casually and lightly, these types of cases are being dealt with by the courts.

3. ASI S.S. Gaur and P.P. Mrigwas while on patrol duty apprehended that the accused on 13.09.2005 at 8.30 pm while they were coming from Bakaniya to Mrigwas Road, Guna, M.P. The accused was found to be in possession of country made

A barrel gun with two round bullets and 50 grams of explosives, without any licence. The accused was charge-sheeted for the offence punishable under Section 25(1)(a) of the Arms Act, 1959 (for short 'the Arms Act') and was tried before the Court of the Judicial Magistrate First Class, Chachoda. From the side
B of the prosecution seven witnesses were examined. After considering the oral and documentary evidence, the court came to the conclusion that the accused was guilty of the offence under Section 25(1)(a) of the Arms Act and on sentence, the court passed the following order:

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> "There is no previous crime in the name of the accused and certainly the accused is the first time offender but from the possession of the accused a rifle was found illegally in his possession, therefore, it is not proper to adopt a lenient approach towards the accused. Only in view of the
D time taken by the trial and the time already spent by the accused in custody, the accused is not punished with the maximum punishment and, therefore, the accused Ayub Khan is sentenced to one year of R.I. and a fine of Rs.100/- for the offence punishable u/w 25(1)(a) of the Arms Act."

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4. The Court then noticed that the accused was in custody from 14.9.05 to 20.9.05 and the said period was deducted from the original sentence applying Section 428 of the Code of Criminal Procedure.

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5. Aggrieved by the said order the accused filed Criminal Appeal No.170 of 2008 before the Additional Sessions Judge, Chachoda on the ground that the conviction of the accused under Section 25(1)(a) of the Arms Act was illegal and that the accused had not committed any offence. The Additional
G Sessions Judge, however, vide his order dated 9.7.2008 confirmed the conviction and the sentence awarded by the Chief Judicial Magistrate. The accused then filed Criminal Revision No.472 of 2008 before the Hon'ble High Court of Madhya Pradesh, Bench at Gwalior. The High Court confirmed
H the order of conviction passed by the trial court but so far as

the sentence is concerned, the High Court passed the following order on 15.01.2009:

> "so far as the period of sentence is concerned, looking to the limited prayer made by the counsel for the petitioner and the nature of offence and the fact that *the petitioner has already served substantive period of jail sentence* the purpose would be served in case the jail sentence awarded to the petitioner is reduced to the period already undergone, subject to depositing fine of Rs.5,000/- within a period of two months, in default the petitioner shall suffer jail sentence awarded by the Learned Court below."

6. Aggrieved by the said order, the State of Madhya Pradesh has approached this Court.

7. Learned counsel appearing for the State submitted that the High Court and the courts below have committed an error in not awarding the minimum statutory sentence to the accused, even after, convicting him for an offence committed under Section 25(1)(a) of the Arms Act. Learned counsel submitted that as per the said Section the minimum statutory sentence is three years but the same can be extended to seven years and the accused shall also be liable to fine. Learned counsel appearing for the respondent-accused submitted that on the peculiar facts and circumstances of the case on hand, the High Court was justified in confining the sentence of the accused to the period already undergone subject to depositing the fine of Rs.5,000/-.

8. We are of the view that the Chief Judicial Magistrate as well as the Sessions Court have committed an error in the manner in which sentence has been awarded and the High Court has committed a grievous error in not awarding the proper sentence after having found the accused guilty under Section 25(1)(a) of the Arms Act. Error is apparent on the face of the High Court's order. The High Court has confined the sentence to the period the accused was in custody stating that

A he had already served substantive period of jail sentence. We are sorry to note that the High Court has not taken pains to examine what was the period he had served by way of substantive sentence. The accused was in custody only for seven days i.e. from 14.9.05 to 20.9.05. We fail to see how the B High Court has reached a finding that the accused had served the substantive period of jail sentence.

9. We are of the view, that the High Court and the courts below have committed a serious error in not awarding the minimum mandatory sentence prescribed under the Statute. C Chapter V of the Arms Act deals with the offences and penalties. The accused was charge-sheeted for the offence under Section 25(1)(a) of the Arms Act for which minimum mandatory sentence was not less than three years. For reference sake, the said provision, in its entirety, is extracted D hereunder:

"25.Punishment for certain offences --(1) Whoever

(a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has E in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(b) shortens the barrel of a firearm or converts an imitation F firearm into a firearm in contravention of section 6; or

(c) * * * * *

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of G section 11

shall be punishable with imprisonment *for a term which shall not be less than three years* but which may extend to seven years and shall also be liable to fine."

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10. Legislature, in its wisdom, has fixed a mandatory minimum sentence for certain offences - keeping, possessing arms and ammunition is a serious offence which shall not be less than three years. Legislature, in its wisdom, felt that there should be a mandatory minimum sentence for such offences having felt the increased need to provide for more stringent punishment to curb unauthorised access to arms and ammunition, especially in a situation where we are facing with menace of terrorism and other anti national activities. A person who is found to be in possession of country made barrel gun with two round bullets and 50 grams explosive without licence, must in the absence of proof to the contrary be presumed to be carrying it with the intention of using it when an opportunity arise which would be detrimental to the people at large. Possibly, taking into consideration all those aspects, including the national interest and safety of the fellow citizens, the Legislature in its wisdom has prescribed a minimum mandatory sentence. Once the accused was found guilty for the offence committed under Section 25(1)(a) of the Arms Act, he has necessarily to undergo the minimum mandatory sentence, prescribed under the Statute.

11. The Chief Judicial Magistrate has overlooked this vital fact and awarded only one year's R.I. and a fine of Rs.100/-, which was confirmed by the Sessions Court. The High Court has made it worst by reducing the sentence to the period already undergone, which was only seven days, in a case where the accused should have undergone a minimum sentence of three years and fine under Section 25(1)(a) of the Arms Act.

12. We, therefore, allow this appeal, set aside the order of sentence passed by the High Court as well as the courts below and order that the respondent-accused has to undergo a minimum period of three years sentence as prescribed under Section 25(1)(a) of the Arms Act and also with a fine of Rs.5000/-, in default, another three months simple imprisonment.

R.P. Appeal allowed.