

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 15th OF JUNE, 2023

CRIMINAL REVISION No.653 of 2023

Between:-

**VIJAY SINGH S/O GOVIND SINGH THAKUR,
AGED ABOUT 72 YEARS, OCCUPATION-
LABOUR R/O VILLAGE BIHARIPURA
P.S.MOHANGARH, DISTRICT TIKAMGARH
(M.P.)**

.....APPLICANT

(BY SHRI BASANT RAJ PANDEY- ADVOCATE)

AND

**THE STATE OF M.P. THROUGH POLICE
STATION MOHANGARH DISTRICT
TIKAMGARH (M.P.).**

.....RESPONDENT

(SHRI S.M. PATEL – PANEL LAWYER)

RESERVED ON : 10.05.2023

PRONOUNCED ON : 15.06.2023

*This criminal revision coming on for admission this day, **Hon'ble Shri Justice Dinesh Kumar Paliwal**, passed the following:*

ORDER

This revision under Section 397 read with Section 401 of Cr.P.C has been preferred by the applicant assailing the appeal

judgment dated 10.01.2023 passed by IInd Addl. Sessions Judge to the Court of Ist Addl. Sessions Judge, Tikamgarh in Cr.A.No.74/2022 (Vijay Singh Vs. State of M.P.) whereby applicant's conviction for commission of offence under Section 25(1-b)(a) of Arms Act and sentence of 01 year RI with fine of Rs. 500/- with default stipulation by the learned JMFC, Tikamgarh vide judgment of conviction and order of sentence dated 27.04.2022 passed in Criminal Case No.15202274/2014, has been affirmed.

2. As per the prosecution story on 05.11.2014 Sub Inspector Mansharam Bagen of P.S. Mohangarh during his beat visit received secret information that Vijay Singh s/o Govind Singh armed with illegal country made pistol at village Jagatnagar is threatening to public at large. At this, he alongwith witnesses and police force reached on the spot encircled and apprehended accused Vijay Singh. In search, one 12 bore country made pistol alongwith one 12 bore live cartridge was seized from shirt and pant worn by him. He was asked to produce the license for possessing the same but he could not produce any license. The aforesaid country made pistol Article A-1 and live cartridges Article A-2 were seized and sealed before the witnesses in presence of the applicant-accused. Seizure memo (Ex.P/1) was prepared. Accused was arrested and arrest memo (Ex.P/2) was prepared. After returning to police station, F.I.R (Ex.P/8) was registered at entry No.194/2014. After investigation charge sheet was filed.

3. Learned trial court framed the charges against the applicant/accused for commission of offence under section 25(1-b)

(a) of the Arms Act. Accused abjured the guilt and claimed to be tried.

4. In order to prove its case, prosecution examined 07 witnesses while accused did not examine any witness in his defence. After hearing the parties, learned trial court convicted and sentenced the applicant as mentioned hereinabove.

5. Applicant challenged the judgment of conviction and order of sentence by preferring appeal before the court of Sessions but the same was dismissed by IInd Addl. Sessions Judge to the Court of Ist Addl. Sessions Judge, Tikamgarh vide impugned judgment dated 10.01.2023. Hence, this revision.

6. Learned counsel for the applicant assailing the findings recorded by the courts below has submitted that the independent witnesses of the seizure memo have not supported the seizure of Article A-1 country made pistol and Article A-2 live cartridge seized from the possession of the applicant. In such circumstances, learned courts below were not justified in convicting and sentencing the applicant relying on the evidence of official police witnesses. Thus, the findings of conviction as recorded by the courts below are illegal, incorrect and improper and prayed for acquittal of the applicant/accused by setting aside the judgment passed by the courts below.

7. On the other hand learned counsel for the State has supported the findings recorded by the courts below and has submitted that the learned courts below after appreciating the evidence of witnesses have rightly convicted the applicant and have awarded minimum

prescribed sentence of one year for commission of offence. Therefore, it is prayed that when concurrent findings of the courts below are available this court should refrain from interfering such the findings recorded by the courts below.

8. I have heard learned counsel for the parties and perused the record of the courts below.

9. Sub Inspector Mansharam Bagen (P.W.7) has deposed that on 05.11.2014, he alongwith police force had left the police station for village Gaur. He had entered his departure in Rojnamcha Sanha at No. 130 dated 05.11.2014. It is further deposed that during area patrolling, he had received information that in village Jagatnagar, one Vijay S/o Govind Singh R/o Biharipura armed with country made pistol is intimidating the village people. At this, he alongwith his staff reached in the village Jagtnagar encircled the accused and apprehended. Article A-1 country made pistol and Article A-2 live cartridge was seized from his pant and waist. Accused was asked to produce the license for possessing the arms and ammunition but he could not produce any license. Consequently, the country made pistol Article A-1 and live cartridge Article A-2 were seized and seizure memo Ex.P/1 was prepared. Accused was arrested and arrest memo Ex.P/2 was prepared. After returning to police station alongwith seized articles and accused, he entered his arrival in the Rojnamcha Sanha at No.136 dated 5.11.2014 and registered the F.I.R (Ex.P.8) at Crime No.194/14.

10. The aforesaid evidence of S.I. Mansharam Bagen (P.W.7) has remained un rebutted in his cross-examination. His evidence stands

fortified from the evidence of Tajuddin Khan (P.W.4) and Raj Bahadur Singh Yadav (P.W.3). Nothing could be elicited in their cross-examination to disbelieve the truthfulness of their evidence. Hence, so far as the factum of recovery of unlicensed one country made pistol Article A-1 and live cartridge Article A-2 from accused is concerned, the evidence of S.I. Mansharam Bagen (P.W.7) finds full support from the evidence of aforesaid two witnesses. Thus, it is apparent that aforesaid country made pistol and live cartridge was seized from the possession of the applicant and he was not having any license for possessing the same.

11. Pratap Soni (P.W.2) has deposed that he had examined seized country made pistol and live cartridge. The country made pistol was in working condition and it was worth firing.

12. Narendra Khare (P.W.6) has proved the sanction for prosecution under Section 39 of the Act by the then District Magistrate Shri Kedar Sharma. He has clearly deposed that Ex.P/6 sanction for prosecution bears signatures of the then District Magistrate Shri Kedar Sharma. Thus, he has duly proved sanction for prosecution.

13. On the basis of aforesaid evidence, the learned courts below has rightly held that on 05.11.2014, applicant/accused in violation of section 3 of Arms Act was illegally possessing Article A-1 country made pistol and Article A-2 live cartridge. The findings recorded by the courts below are as per the evidence on record and the recovery of weapon and one live cartridge, as mentioned above, is found proved from the possession of the present applicant. Hence, no fault

is visible in the findings recorded by the courts below. Thus, the findings of applicant's conviction recorded by court below and affirmed by appellate court for offence under Section 25(1-B)A, is confirmed.

14. So far as the quantum of sentence is concerned, it is apparent that the trial court has awarded one year RI and fine of Rs.500/-. The minimum statutory prescribed sentence for offence under section 25(1-B)A at the time of commission of offence was one year, therefore, it is apparent that minimum prescribed mandatory sentence has been awarded. The Hon'ble Supreme Court in the case of *State of M.P. Vs. Ayub Khan-(2012) 8 SCC 676* has held as under

“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.”

15. Thus, as the minimum sentence has been awarded by the learned JMFC and the same has been affirmed by the learned Addl. Sessions Judge, the same is not required to be reduced for the period already undergone by the applicant. Therefore, for the reasons stated hereinabove, there is no need to interfere in the findings of conviction and order of sentence recorded by the courts below.

16. In view of the above, this revision being devoid of merit, is hereby **dismissed**.

(DINESH KUMAR PALIWAL)
JUDGE