

(2009) 05 P&H CK 0231

High Court Of Punjab And Haryana At Chandigarh**Case No:** Murder Reference No. 5 of 2000 and CWP No. 8389 of 2003

State of Punjab

APPELLANT

Vs

Swaran Singh

RESPONDENT

Date of Decision: May 26, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21

Citation: (2009) 30 CriminalCC 573**Hon'ble Judges:** Tirath Singh Thakur, C.J; Jasbir Singh, J; Hemant Gupta, J**Bench:** Full Bench

Advocate: T.S. Sangha and Mrs. G.K. Mann, Mr. D.S. Randhawa, Mr. H.S. Sangha and Mr. J.S. Lalli, for the Appellant; Amol Rattan Singh, AAG, Punjab for Respondent and Mrs. Vandana Malhotra for Mr. Gurpreet Singh, Amicus Curiae for Union of India, for the Respondent

Final Decision: Dismissed

Judgement

T.S. Thakur, C.J.

A Division Bench of this Court has while hearing two murder appeals and an accompanying reference expressed doubts about the correctness of a decision rendered by another Division Bench in Santokh Singh v. State of Punjab, 2000 (3) RCR (Cri) 637 and referred to a larger bench, the following two questions for an authoritative pronouncement:-

1. Whether the judgment of Division Bench is correct in law?
2. Whether section 27(3) of the Arms Act is unconstitutional being violative of Article 14 and 21 of Constitution of India?
2. The reference arises in the following backdrop:-

Appellants Swaran Singh and Balwinder Singh, who were at the relevant point of time working as Special Police Officers in Punjab State Police Department, were both

tried for commission of an offence punishable u/s 302 read with Section 34 of the Indian Penal Code and Section 27(3) of the Arms Act. The trial Court found both the appellants guilty of murder and sentenced them to undergo imprisonment for life and payment of fine of Rs. 1000/- each. Appellant Swaran Singh was also convicted u/s 27(3) of the Arms Act for committing murder with a prohibited fire arm and sentenced to death. Aggrieved, the appellants preferred Criminal Appeal Nos.273-DB and 296-DB of 2000, which were taken up for hearing by a Division Bench of this Court together with Murder Reference No. 5 of 2000 u/s 366 of the Cr.P.C. for confirmation of the death sentence.

3. By its order dated 13.02.2001 the Division Bench confirmed the finding recorded by the Trial Court to the extent the same held appellant Swaran Singh guilty of committing the murder of deceased Sat Pal. Appellant Balwinder Singh was however acquitted of the charges and his appeal allowed and disposed of accordingly. Disposal of the reference for confirmation of death sentence awarded to appellant Swaran Singh was postponed as the Court prima facie held the view that the decision in Santokh Singh's case (supra) required reconsideration to the extent the same declared that a .303" rifle was not a prohibited arm within the meaning of Arms Act. The Division Bench observed:-

It is true that the observations of the Division Bench do support the argument of the learned counsel but we are of the opinion that the said judgment ignores the basic fact that the method of loading or unloading a weapon is not the only determining factor leading to its classification as a prohibited arm as Section 2(1)(i) of the Act must be read along with Schedule-I to the Arms Rules, 1962. We are prima-facie of the opinion that entry 1(c) of the Schedule deals with the present situation and not entry 1(a).

4. The Court also relied upon the decision of Supreme Court in *Mithu v. State of Punjab*, 1983 SCC (Cri.) 405 whereby Section 303 of the Indian Penal Code was struck down by their Lordships as unconstitutional and held that Constitutional validity of Section 27(3) of the Arms Act required to be examined inasmuch as the said provision excluded judicial assessment and discussion visualised in *Mithu's* case (supra).

5. We have heard the learned counsel for the parties at considerable length. In *Santokh Singh's* case (supra), one of the questions that fell for consideration was whether a 7.62 mm bore bolt action rifle was a prohibited arm within the meaning of Section 2(1)(i) of the Arms Act so as to attract the provision of Section 27(3) thereof and justify the award of death sentence to the accused, who had committed murder with the help of such a weapon. The Court answered the question in the negative and held that an arm can be construed as "prohibited" only when it answered the description given in Section 2(1)(i) or is an arm which has been specifically notified by the Central Government in the official gazette to be a "prohibited arm." The use or possession of any other weapon did not fall within the

mischief of Sections 7 and Section 27(3) of the Act declared the Court. Since the rifle used in that case was not shown to have been notified as a prohibited arm by the Central Government, what was to be seen was whether the rifle used in that case answered the description/definition of a "prohibited arm" given in Section 2(1)(i) of the Act. The Court declared that a 7.62 mm rifle was a bolt action rifle which meant that the weapon had to be bolted every time a shot had to be fired. Such a weapon could not, therefore, be described as a prohibited arm as continued application of pressure to the trigger did not by itself discharge missiles continuously till the pressure was removed. We are in respectful agreement with the said line of reasoning. We say so for more than one reasons. Firstly because an arm can be said to be a prohibited either because it is notified to be so by the Central Government or because it answers the definition of the prohibited arm appearing in Section 2(1)(i) of the Act, which reads as under:-

Section 2(1)(i) "prohibited arms" means-

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) xxxx

6. It is, in the instant case, not in dispute that .303 rifle has not been notified as a prohibited arm by the Central Government. No such notification has at any rate been produced before us although an opportunity for the purpose was granted to the Government of India. Indeed Mr. Gurpreet Singh, Advocate appearing for the Central Government fairly conceded that the Government had not notified .303" Rifle as a prohibited arm in terms of Arms Act, 1959. That being so, such a .303" rifle can be treated as a prohibited arm only if it can be said to be so designed or adapted that when pressure is applied to the trigger, missiles continue to be discharged until pressure is removed or the magazine is emptied. That, however, is not the position in the case of a .303 rifle, which is a bolt action rifle implying thereby that the weapon has to be bolted every time, a shot has to be fired from the same. Once bolted the pressure to the trigger would result in the discharge of "a missile" but no amount of continued pressure on the trigger can result in the discharge of another missile from the same until the weapon is bolted again. Secondly because Schedule I of the Arms Rules upon which the Division Bench has placed reliance while referring the matter to a larger Bench does not, in our opinion, alter or enlarge the definition of the expression "prohibited arm" in Section 2(1)(i) of the Act. Rule 3 and Schedule 1 to the Rules aforementioned simply categorise arms and ammunition for the purpose of the Act. Rule 3 runs thus:-

Rule 3. Licence for acquisition and possession of firearms and ammunition - [(1)] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of

this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

[(2)] Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in subsection (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purpose of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armory referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of Section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arms or ammunition under sub-section (1) of that section.]

7. A bare reading of the above would show that schedule I of the rules has relevance only for the purpose of the categorisation of arms and ammunition for the purposes of the Act and rules and no more. It is also manifest that category 1(a) therein adopts for the purpose of definition of "prohibited arms" the meaning given to that expression in section 2(1)(i). In category 1(b) fall semi automatic firearms other than those included in categories 1(c) & 111(a) smooth bore guns having a barrel of less than 29" in length. Bolt action or semi automatic rifles of .303 or 7.62 mm bore or any other bore which can chamber and fire service ammunition of .303 or 7.62 mm, calibre, muskets of .410 bore etc. including pistol, revolver or carbines of any bore which can chamber and fire "380" or "455" rimmed cartridges or service 9 mm, or "45" rimless cartridges fall in category 1(c). The schedule also categorises accessories for any firearms, machinery for manufacturing etc.

8. Rule 4 referred to in Schedule II stipulates the authority that would grant or renew the licenses referred to in Chapter II of the Act and the period as also the area for which the same can be granted and the conditions subject to which the licence can be issued. Suffice it to say that on a conjoint reading of Rule 3 and 4 read with Schedule 1 and II, leaves no manner of doubt in our minds that neither Schedules I nor Schedule II not even Rules 3 and 4 alter the basis on which an arm

may be declared to be a prohibited arm. The Schedules do not ipso facto make a bolt action, .303 or 7.62 mm rifle a prohibited arm. As a matter of fact the placement of prohibited arms defined in Section 2(I)(i) and referred to in category 1(a) of and bolt action rifle of .303 or 7.62 mm bore rifle and referred to category 1(b) in separate categories signifies that the later category of arms are not prohibited by themselves unless the Central Government specifically declares them to be so by a notification in the Official Gazette. Schedule II of the Arms Act read with definition of expression of prohibited arms in Section 2(I)(i) of the Act does not, therefore, lend any support to the view that the decision in Santokh Singh's case supra was erroneously rendered. On the contrary a careful reading of the Rules 3 and 4 and two Schedules referred to therein make it manifest that in the absence of a notification by the Government declaring .303 rifle as a prohibited arm, the said weapon cannot be treated as the one prohibited under the Act. We have therefore, no hesitation in affirming the view taken in Santokh Singh's case supra as the correct view. Question No. 1 is answered accordingly.

9. In the light of what we have said above it is unnecessary for us to answer question No. 2 formulated by the Division Bench. Whether or not Section 27(3) of the Act suffers from the vice of any unconstitutionality in the light of law declared in Mithu" case supra or otherwise has been rendered academic. The need to examine that aspect would have arisen only if we had held a .303" rifle used in the instant case as a prohibited arm so as to attract application of Section 27(3) of the Act and make it imperative for the Court to sentence the accused to death. In the absence of any such compulsion arising for the court u/s 27(3) of the Act, there is no need for us to go into the issue whether or not the said provision is constitutionally valid. The question is, therefore, left open to be determined in an appropriate case, should the need to do so arise.

10. The reference is answered accordingly. The matter shall now be placed before the appropriate Division Bench for hearing and disposal of the Criminal reference in the light of view taken by us.

11. Civil Writ Petition No. 8389 of 2003 is, however, rendered infructuous and is dismissed accordingly. No costs.