
(1993) 01 MP CK 0011
Madhya Pradesh High Court
Case No: C.R. No. 138 of 1992

Ram Prakash

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Jan. 28, 1993

Acts Referred:

- Arms Act, 1959 - Section 2, 25(1B), 3, 4, 41

Citation: (1993) CriLJ 3078 : (1993) 2 MPJR 409

Hon'ble Judges: S.K. Chawla, J

Bench: Single Bench

Advocate: B.N. Kulshreshtha, for the Appellant; S.C. Bansal, PLS, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Chawla, J.

Accused Ram Prakash has filed this revision challenging appellate judgment of the Court of Session Morena affirming his conviction u/s 25(1-B) of the Arms Act, 1959 and reducing the sentence from 6 months" simple imprisonment and fine of Rs. 500/- imposed by the Magistrate, to a simple fine of Rs. 500/-, in default to simple imprisonment for 1 month.

The prosecution story shortly stated was that on 3-11-1988 at about 7 p.m., Head Constable Birendra Singh (PW 3), while on town patrolling received information that one Ram Prakash had stabbed one Pritam on Station-Road in Morena Town. When he, accompanied with another Head Constable Moharman Lal Sharma (P.W. 4), reached Station Road, it was found that Pritam had left for lodging a report at the Police Station. Accused Ram Prakash was however found on the road. He was found to have tied a knife to his waist. That knife was seized from him. It had a blade of the length of 12" inclusive of the handle. Accused Ram Prakash had no licence to carry it.

The accused had therefore committed an offence punishable u/s 25(1-B) of the Arms Act, 1959.

Making his first submission in support of the revision, Shri B.N. Kulshreshtha, learned counsel for the accused/applicant submitted that the alleged knife seized from the accused was not of the specified description needing a licence, described in Government Notification issued u/s 4 of the Arms Act, 1959. The ease property knife, it was pointed out, on being inspected in this Court, was found to be a knife without any spring and having a blade 8 1/2" in length and 1.2" in width. It was urged that since the width of the blade was less than 2", the knife in question did not come within the category of arms of specified description and therefore, did not require any licence. It was necessary that the blade of the knife should have had not only length of more than 6" but also width of more than 2" to be an arm of specified description given in the notification.

It will be proper to set out the notification which the State Government of M.P. issued under the provisions of Section 4 of the Arms Act, 1959. The notification is as under:

Notification No. 6312-6552-II-B(i) dated the 22nd November, 1974.

Whereas the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expedient in the public interest that acquisition, possession and carrying of sharp edged weapons with a blade more than 6 inches long 2 inches wide and spring actuated knives with a blade of any size in public places should also be regulated.

Now, therefore in exercise of the powers conferred by Section 4 of the Arms Act, 1959 (No. 54 of 1959) read with the Government of India, Ministry of Home Affairs, Notification No. G.S.R. 1309, dated the 1st October, 1962, the State Government hereby directs that the said section shall apply with effect from the date of publication of this Notification in the "Madhya Pradesh Gazette" to the whole of the State of Madhya Pradesh in respect of acquisition, possession or carrying of sharp edged weapons with a blade more than 6 inches long or 2 inches wide and spring actuated knives with a blade of any size in public places only.

(Published in M.P. Rajpatra Part I dated 3-1-1975 page 20).

Before entering on a discussion on the above Government Notification, it may be proper to notice a basic difference between a fire arm and an arm in the scheme of the Arms Act. A fire arm of any description cannot be acquired, possessed or carried, except under a licence. Section 3 says "No person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder....." (Emphasis supplied). There is however no such wholesale embargo with respect to arms. Section 4 says "If the Central Government is of the opinion

that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms, other than fire-arms should also be regulated, it may, by notification in the official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in possession or carry in that area arms of such class or description as may be specified in that notification, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder" It will thus be seen that with respect to arms, other than fire-arm, a licence is necessary only with respect to arms of specified description under conditions given in Section 4. It is evident that a fire-arm has necessarily to be an arm but an arm is not necessarily a fire-arm. An arm designed or adapted to discharge a projectile or projectiles of any kind by the action of explosive or other forms of energy, is a fire-arm; vide clause (e) of Section 2 of the Act. The contravention of the provision of Section 3 has been made punishable u/s 25(1-B) of the Act. The contravention of the provision of Section 4 is punishable u/s 25(1-B) of the Act. The two penal provisions may be usefully reproduced here.

Section 25 *****

(1-B) whoever --

(a) acquires, has in his possession or carries any fire-arm or ammunition in contravention of Section 3; or

(b) acquires, has in his possession or carries in any place specified by notification u/s 4 any arms of such class or description as has been specified in that notification in contravention of that section, or....."

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year."

The second penal provision namely, u/s 25(1-B) is a recondite provision, not often used, which explains why conviction was not correctly recorded under that provision by the two Courts below. The trial Court recorded the conviction u/s 25(1-B) and the appellate Court maintained conviction under that provision, when conviction should have been u/s 25(1-B) of the Act.

It will be seen that it is the Central Government, which has to form an opinion and issue notification u/s 4 of the Act. But the notification reproduced above has been issued by the State Government. Section 43 of the Act gives power to the Central Government to direct by notification in the Official Gazette that any power or function exercisable or performable by it under the Act, other than power u/s 41 (power to exempt) or power u/s 44 (Power to make rules), may be exercised or performed inter alia by the State Government. It was under a delegation by the

Central Government by the notification, mentioned in the notification under consideration, that the State Government issued the notification u/s 4 of the Act.

It is with reference to the said notification of the State Government issued u/s 4, which has already been reproduced, that we have to examine the correctness of the contention of learned counsel of the accused/ applicant that a knife, which is not spring actuated, is not an arm of specified description, unless its blade is both more than 6" long and more than 2" wide. So far as spring actuated knife is concerned, there is no controversy that it is an arm of specified description irrespective of the size of its blade.

It will be seen that the notification under consideration is in two paragraphs. The first paragraph is, what may be called, the recital part. The second paragraph is the operative part. Two kinds of arms are mentioned in the recital part. The first kind of arms mentioned are sharp edged weapons with a blade "more than 6 inches long 2 inches wide". The second kind of arms mentioned are spring actuated knives with a blade of any size. While describing the first kind of arms there is omission of the conjunctive word, "and" or "or" between the words "6 inches long" and "2 inches wide". The omission of conjunctive word may give scope for argument as to what kind of weapon was exactly meant and in that sense the omission may be said to have introduced some kind of ambiguity. The operative part however is very clear. The operative part also describes two kinds of arms as those mentioned in the recital part. The first kind of arms mentioned are sharp-edged weapons with a blade "more than 6 inches long or 2 inches wide". The second kind of arms mentioned are spring actuated knives with a blade of any size. The use of the conjunctive word, "or" between the words "6 inches long" and "2 inches wide", while describing the first kind of arms, puts the matter beyond the pale of any controversy. If there was any ambiguity in the description of the first kind of arms in the recital part, that does not have any effect and cannot by any means create any ambiguity or controversy in the operative part. It is an accepted canon of interpretation that if the operative part is clear and unambiguous, nothing stated in the recital part can control the operative part. Besides spring actuated knives with a blade of any size, about which there is no controversy that they are arms of specified description, there may be following kinds of sharp-edged weapons:

Sharp-edged weapons with a blade:

	Length	Width
(1)	Exceeding 6"	Exceeding 2"
(2)	Exceeding 6"	2" or less.
(3)	6" or less	Exceeding 2"
(4)	6" or less	2" or less

Considering the clear language in the operative part, namely "sharp-edged weapons with a blade more than 6 inches long or 2 inches wide", there can be no doubt that

sharp-edged weapons described in classes (1), (2) and (3) above will fall within the ambit of the above expression and only sharp-edged weapons mentioned in Class (4) will fall outside it. The conclusion which follows is clear that (i) sharp-edged weapons having a blade more than 6" in length irrespective of the width and (ii) sharp-edged weapons having a blade with width exceeding 2" irrespective of the length, are arms of specified description mentioned in the notification, besides of course, spring actuated knives with a blade of any size. Judged by this test, the knife seized from the possession of the accused in the present case, having a blade of the length of more than 6", i. e. 8 1/2", although having the width of less than 2", i.e. 1.2", was an arm of specified description under the above notification for which a licence was necessary, being carried in a public place. The contention of learned counsel for the applicant/accused that the said knife was not a weapon of specified description is incorrect and is negated. The conviction of the accused/ applicant was therefore unassailable.

The second and final submission made by the learned counsel for the applicant/ accused was that the accused is a primary school teacher in Government School. The sentence visited on him may put his service in jeopardy. Hence he should be given benefit of probation. It is found that the trial Court inflicted on the accused substantive sentence of imprisonment as well as sentence of fine. The appellate Court set aside the sentence of substantive imprisonment and maintained only the sentence of fine, with sentence in default of payment of fine. The entire fine of Rs. 500/-, on the applicant's own showing, was paid by him in the trial Court soon after the judgment by the trial Court. The circumstances of the case do not warrant a situation in which refund may be directed to be made to the applicant. The offence of which the accused has been convicted does not involve any moral turpitude and is not likely to affect the service of the applicant. There is no case for probation. As such there is no ground to interfere with the sentence which was already reduced by the appellate Court.

For the foregoing reasons the present revision petition is found to have no force and is dismissed.