IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Revision No. 35 of 2011.

Judgment reserved on : 21.11.2011

Date of decision: 28.12.2011

State of Himachal Pradesh **…Petitioner.**

Versus

1. **Sh. Neeraj S/o Sh. Shanu Mal,**
2. **Sh. Krishan Lal S/o Sh. Kirpa Ram,**
3. **Sh. Balwant S/o Sh. Purshotam,**
4. **Sh. Kapil Mohan S/o Sh. Prem Chand**
5. **Sh. Rinku S/o Sh. Tej Pal**
6. **Sh. Sunil Kumar S/o Sh. Gita Ram**
   R/o Village Shanan, P.O. Pujarli No.2, Via Jubbal, Rohru, District Shimla, H.P.

....Respondents.

Criminal Revision under Section 397, 401 read with Section 482 of the Code of Criminal Procedure.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting ? Yes

For the Petitioner : **Ms. Ruma Kaushik, Addl. A.G. with Mr. J.S.Rana, Asstt. A.G.**

For the Respondents. **Mr. Satyen Vaidya, Advocate.**

Kuldip Singh, Judge

The State has filed the present revision against order dated 10.12.2010 passed by Additional Sessions Judge, Fast Track Court, Shimla, Camp at Rohru in Sessions Trial No. 5-R/7 of 2010 arising out of FIR No. 49 of 2009 dated 13.4.2009 registered at Police Station, Rohru, discharging the respondents under Section

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[1] *Whether reporters of Local Papers may be allowed to see the Judgment ? .yes*

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307 read with Section 149 IPC and Section 25 of the Arms Act, 1959 (for short 'Act') and holding that prima facie case against the respondents has been made out for offences punishable under Sections 148, 324, 506 read with Section 149 IPC.

2. The facts in brief are that in FIR No. 49 dated 13.4.2009 registered at Police Station, Rohru report under Section 173 Cr.P.C. was filed against the respondents for offences punishable under Sections 148, 307, 324, 506 read with Section 34 IPC and Section 25 of the Arms Act. The case was committed to the court of Sessions by Sub Divisional Judicial Magistrate, Rohru on 23.3.2010. The Sessions Judge assigned the case to Additional Sessions Judge, Fast Track Court, Shimla on 27.4.2010.

3. The prosecution case in brief is that on the basis of statement under Section 154 Cr.P.C. of Rajeev Kumar, FIR No. 49 of 2009 came to be registered at Police Station, Rohru on 13.4.2009. In the FIR it has been stated that on 13.4.2009 the complainant had gone for his personal work to Melthi, at about 5.00 p.m. he was standing in Melthi Bazar near taxi stand, the car bearing registration No. HP-10A-1580 came from Shalahan side in which accused were sitting and it was being driven by Kapil Mohan.

4. It has been alleged that car was stopped near complainant, Neeraj while sitting in the car gave a sword blow and pierced the right wrist of complainant from where excessive blood oozed out. The accused came out from the car and said they had come to sever his head. He was saved by Pawan Kumar, Babloo,

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Bali Ram and others, otherwise the accused would have killed him. Thereafter all the accused fled away in the same car after extending threats that they would kill the complainant.

5. The Additional Sessions Judge vide order dated 10.12.2010 has held material prima facie does not disclose the commission of offence punishable under Section 307 read with Section 149 IPC. It has also been held that there is no allegation in the chargesheet that sword is a 'prohibited arm' within the meaning of Section 2(i) of the Act. The copy of notification issued by the Central Government has also not been placed on record, nor it is the case that some licence was required to be taken in respect of sword under Section 5 of the Act. It has been observed that there is no material to frame charge even for offence punishable under Section 27 of the Act. The learned Additional Sessions Judge discharged the respondents under Sections 307 read with Section 149 IPC and Section 25 of the Act but held that prima facie case is made out against respondents for offences punishable under Sections 148, 324, 506 read with Section 149 IPC. The case vide impugned order has been sent to Sub Divisional Judicial Magistrate, Rohru for disposal in accordance with law. The State has challenged the order dated 10.12.2010.

6. I have heard the learned Additional Advocate General for the petitioner and Mr. Satyen Vaidya, Advocate learned counsel for the respondents. On behalf of the petitioner, it has been submitted that Additional Sessions Judge has erred in discharging

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the respondents for offences punishable under Section 307 read with Section 149 IPC and Section 25 of the Act. The learned counsel for the respondents has supported the impugned order and has submitted that no fault can be found with the impugned order.

7. The complainant Rajeev Kumar was got medically examined on 13.4.2009 and five injuries were found on his person by the doctor in the MLC. The patient was referred to IGMC, Shimla for expert opinion and treatment. The investigating officer sought the opinion of the doctor vide letter dated 17.4.2009, who opined that injuries sustained in right forearm can be dangerous to life of patient in case of continuous and excessive loss of blood from the wound. On 15.7.2009 on the basis of final opinion given by the expert from IGMC, Shimla, the injuries mentioned in the MLC were found simple in nature. The complainant Rajeev Kumar in his supplementary statement under Section 161 Cr.P.C. has stated that in case he would not have taken the sword blow on his right arm then the blow of sword would have pierced the abdomen and he would have been killed on the spot. The accused came out of the car and encircled him and gave him beatings with kick and fist blows and said remove his head and kill him.

8. Section 307 IPC provides that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if

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hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned. The first part of Section 307 refers to 'act'. The second part of Section 307, however also refers to hurt and for two situations different punishments have been provided.

9. The Supreme Court in **State of Maharashtra vs. Balram Bama Patil and others AIR 1983 SC 305** has held as follows:-

> "…..To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any, such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

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10. The Additional Sessions Judge has observed that Medical Officer, Civil Hospital, Rohru vide his final opinion dated 15.7.2009 has categorically opined that injuries were simple and there is no reference that these were dangerous or imminently dangerous to the life of the complainant. The intention or knowledge to commit the murder by causing these injuries is clearly not inferable from the material on record. The Additional Sessions Judge ultimately observed that no offence punishable under Section 307 read with Section 149 IPC is made out against the respondents. The Additional Sessions Judge has over emphasized the nature of injuries sustained by the injured ignoring what was to be considered at the time of framing of charge.

11. The injured in his supplementary statement under Section 161 Cr.P.C. has stated that in case he would not have taken the sword blow on his right arm then the blow of sword would have pierced the abdomen and he would have been killed on the spot. This aspect of the case has not at all been considered by the Additional Sessions Judge in the impugned order while considering the case against the respondents under Section 307 read with Section 149 IPC at the stage of charge. The Supreme Court in **State of Maharashtra vs. Balram Bama Patil** (supra) has held to justify a conviction under Section 307 it is not essential that bodily injury capable of causing death should have been inflicted. The act of accused may not be attended by any result so far as the person

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assaulted is concerned but still the culprit would be liable under Section 307 IPC. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in section 307 IPC. The supplementary statement of injured that in case he would not have taken the blow of sword on his right arm then the blow of sword would have pierced the abdomen and he would have been killed on the spot cannot be ignored at the time of framing of the charge. It is the case of the injured that he took blow of the sword on his wrist which pierced it. In these circumstances, the impugned order discharging the respondents under Section 307 read with Section 149 IPC is not sustainable.

12. The Additional Sessions Judge has observed that there is no allegation of violation of Section 3 of the Act which is meant for licence for acquisition or possession of fire arms and ammunition. It has been observed that Section 39 of the Act requires previous sanction of District Magistrate to prosecute the offender for violation of Section 3 of the Act. It has been held that Section 39 of the Act is not applicable in the present case. It has, however, been held that Section 25 of the Act mainly deals with manufacture, sale, transport, repairs and possession of arms in contravention of Sections 5, 7, and 9 of the Act which has been made punishable under Section 27. It has been observed that there is no allegation that sword is a 'prohibited arm' within the meaning of Section 2 (i) of the Act nor copy of notification issued by the Central Government prohibiting

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such other 'arms' has been placed on record. It has also been observed that it is not the case of the prosecution that some licence was required under Section 5 of the Act.

13. Section 7 of the Act provides as under:-

> **"7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.-** No person shall –
>
> (a) acquire, have in his possession or carry; or
>
> (b) use, manufacture, sell, transfer, convert, repair, test or prove; or
>
> (c) Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,
>
> any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in this behalf."

Section 25 (1A) is as follows:-

> "Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine."

Section 27 (2) is as follows:-

> "Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine."

The Rule 3 is as follows:-

> **"Classification of arms or ammunition**. – For the purposes of the Act and these rules, "arms" or

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> "ammunition" shall be of the categories specified in columns 2 and 3 respectively of Schedule I and references to any category of arms or ammunition in these rules shall be construed accordingly."

14. The item No. V of Schedule –I of the Rules refers to 'sword' .Rule 3 provides that for the purposes of the Act and the Rules "arms" or "ammunition" shall be of the categories specified in columns 2 and 3 respectively of Schedule I and references to any category of arms or ammunition in these rules shall be construed accordingly. Section 2(1) (c) defines "arms" which includes sharp-edged or other deadly weapons. It cannot be said that sword is not sharp-edged or not deadly weapon. Section 25 (1A) and Section 27 (2) refers to "prohibited arms" or "prohibited ammunition". Section 2 (1) (h) defines "prohibited ammunition", admittedly sword is not prohibited ammunition. Section 2 (1) (i) defines "prohibited arms" and provides such other arms as Central Government may, by notification in the Official Gazette, specify to be prohibited arms. There is nothing on record to show that sword has been notified by Central Government in the Official Gazette to be prohibited "arms" nor any such notification has been shown at the time of hearing, therefore, possession of sword prima-facie on the basis of allegations made in the present case does not come within the ambit of Section 25 (1A) and Section 27(2) of the Act.

15. In these circumstances, no fault can be found with the impugned order so far the respondents have been discharged by the

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Additional Sessions Judge for offence punishable under Section 25 of the Act.

16. The result of above discussion, the revision is partly allowed. The impugned order dated 10.12.2010 passed by Additional Sessions Judge, Shimla discharging the respondents/accused under Section 307 read with Section 149 IPC is set-aside and discharge of the respondents under Section 25 of the Arms Act, 1959 is upheld. The parties through their counsel are directed to appear before the Additional Sessions Judge, Shimla on **13.01.2012**. The record be also sent back immediately to the Court of Additional Sessions Judge, Shimla, so as to reach before the date fixed. The Additional Sessions Judge, Shimla shall proceed with the case in accordance with law. Cr.MP No. 663 of 2011 is also disposed of in view of disposal of the main revision.

December 28, 2011. **(Kuldip Singh)**
(GR) **Judge.**

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