IN THE COURT OF SPECIAL JUDGE (P C ACT) CBI-20
ROUSE AVENUE COURTS COMPLEX : NEW DELHI

Criminal Appeal No. 16/2019
CNR No. DLCT11-001784-2019

S. S. Ahluwalia
S/o Sh. M.S. Ahluwalia
R/o F-5, South Extension Part-II,
New Delhi 110 049 **.... Appellant**

VERSUS

Central Bureau of Investigation
Through its Director,
Plot No. 5-B, CGO Complex,
Lodhi Road, New Delhi 110 003. **.... Respondent**

RC No. 6/1987-CBI/SIU-1/New Delhi
U/S 420, 467, 471 IPC & Sec 25 of Arms Act

Date of filing of appeal	**:**	**13.09.2019**
Date of allocation	**:**	**16.09.2019**
Arguments concluded on	**:**	**16.03.2020**
Date of judgment	**:**	**10.07.2020**

(Delay on account of nationwide lockdown due to Covid-19 pendemic)

Appeal u/s 374 CrPC against the judgment dated 30.08.2019 and order of sentence dated 02.09.2019 passed by Ld. ACMM-2-cum- ACJ, Rouse Avenue Courts Complex, New Delhi in case No. CBI/52/2019 titled as "CBI vs. S.S. Ahluwalia".

JUDGEMENT

1. This judgement is pronounced through Video Conferencing as due to Covid-19 pandemic physical hearing in the Courts have been suspended.

2. Present appeal lays challenge to the judgment of conviction dated 30.08.2019 and order of sentence dated 02.09.2019 passed by Ld. Trial Court against the appellant.

3. Vide impugned judgement of conviction dt 30.08.2019 the appellant, an IAS officer of 1986 batch of Nagaland cadre, was convicted under Section 417 r/w section 415 IPC, under Section 471 IPC r/w Section 467 IPC and under Section 25 of Arms Act, 1959.

4. Further, vide order of sentence dt 02.09.2019, appellant was sentenced to undergo rigorous imprisonment of one year for the offense u/s 417 IPC r/w section 415 IPC, rigorous imprisonment of two years and fine of Rs. 50,000/- for the offense u/s 25 of Arms Act with default in payment of fine to further undergo simple imprisonment for six months and rigorous imprisonment of five years with fine of Rs. 1,00,000/- for offense u/s 471 r/w section 467 IPC with default in payment of fine to further undergo simple imprisonment for one year.

5. Aggrieved by the said judgment of conviction and order of sentence, appellant herein has preferred the present appeal on various grounds, which shall be discussed at appropriate place, if required.

6. Brief facts which led to trial and conviction of the appellant as disclosed from the chargesheet and judgment are that during the course of investigation in RC -1/87-ACU-I, searches were conducted on 26.03.1987 at the residential premises No. D-II 49, Pandara Road, Delhi, under the occupation of appellant. The search was conducted in the presence of two independent witnesses and among other things following firearms and ammunition held in the name of appellant S. S. Ahluwalia were recovered and seized:

i). One .38 bore revolver bearing No. SS57055 along with 74 cartridges with license No. 4165 NH/NEW in the name of accused S. S. Ahluwalia issued by the office of DC, Kohima, Nagaland.

ii). One NP Bore pistol No. 31336 with 32 cartridges along with license No. 5769 NH/NEW in the name of appellant/accused S.S. Ahluwalia issued by the office of DC, Kohima, Nagaland.

iii). One rifle SBBL No.38312 made in Czechoslovakia.

iv). One carbine with Magazine No. 2790379 UNDERWOOD made in US along with license No.9315 NH/ NEW in the name of accused S.S. Ahluwalia issued by DC, Kohima on 24.09.85. Further, 200 cartridges of SLR and 46 cartridges for carbine were also recovered.

7. On 28.03.87, further search was conducted at premises No. AF/3, Science College Road, Kohima, under the occupation of appellant/accused in connection with investigation of RC-1/87-ACU-I in the presence of independent witnesses and among other things following firearms and ammunitions were recovered:

i). One .22 bore rifle No.30055 covered under license No. 2431 MKG.

ii). 167 solled .22 bore cartridges manufactured by the Indian Ordinance Factory.

iii). 300 live 6.35 mm cartridges in a wooden box.

8. On the basis of complaint No. CON/ARMS/87 dated 20th August 1987 of Smt. Banuo Z. Jamir, the then Dy. Commissioner, Kohima, Nagaland and on the basis of recovery of above firearms and ammunitions, present case vide RC No. 6/87-SIU-I was registered against appellant/accused u/s 420/467/471 r/w

section 467 IPC and Section 25 of Arms Act.

9. During the course of investigation, it was found that accused S. S. Ahluwalia had three firearms licenses issued in his favour in the year 1972, 1976 and 1978 vide arms license No. 2431 MKG dated 08.03.1972 for .22 rifle bearing No. 30055 Czechoslovakia, license No. 5769 NH/NEW dated 26.04.1978 for N. P. Bore Pistol bearing No. 31336 by Bernadally and license No. 4165 NH/NEW dated 28.03.1978 for pistol/revolver bearing No. SS-57055 respectively. Investigation further disclosed that possession of three firearms on the above mentioned three licenses was the maximum one was entitled to possess under the Arms Act, 1959 as amended in 1983.

10. Investigation further disclosed that appellant/accused applied for another firearm license for .30 bore license to the Commissioner, Kohima, Nagaland on 23.09.1985. The scrutiny of the application form revealed that column No. 13 and 16 were deliberately left blank by the appellant/accused to hide the fact that the appellant was already in possession of three firearms under previously granted three arms licenses. In column No. 13, the appellant/applicant was required to disclose whether he had possessed any firearms before and in column No. 16, the appellant/applicant was required to disclose whether he had previously applied for license and if so, what was the result

thereof. However, appellant/accused, it is alleged, deliberately left both the columns blank.

11. Investigation further revealed that the order for the issue of fourth license No. 9315 NH/NEW for .30 bore Rifle (carbine) was issued by Sh. M. Jakahlu, the then Commissioner, Kohima, Nagaland on 24.09.1985 and against the said fourth license appellant/accused purchased two weapons from M/s. B. R. Sawhney & Company, Chandni Chowk Delhi on 30.09.1985. Investigation further revealed that applicant/accused made alteration and added in the license expression "**& N.P. Bore Rifle**" as well as the numeral "**0**" to the numeral 200 and word "**each**" after the numerals 200 (*which was made 2000 by adding 0*) so as to show that appellant/accused was permitted to have ammunition maximum to 2000 for each of the firearms though the license was issued for 200 cartridges and for only one firearm/weapon i.e. .30 bore Rifle (carbine). It is alleged that Handwriting Expert has confirmed that additions/alteration in the fourth license was made by the appellant/accused himself.

12. After completion of investigation, charge-sheet was filed before the Court. Separate charges for four offenses under Section 420, 467, 471 IPC and 25 Arms Act respectively were framed against appellant/accused S. S. Ahluwalia. He pleaded not guilty to the

charges framed and claimed trial.

13. Prosecution had cited 31 witnesses but examined only 09 witnesses at trial to prove its case against appellant/accused. Defense/appellant did not examine a single witness.

14. The accused in his statement under Section 313 Cr.PC. had denied the searches allegedly conducted at his premises No. DII, 49, Pandara Road, Delhi on 26.03.1987 and at premises No. AF/3, Science College Road, Kohima on 28.03.1987. He admitted by not denying possession of 4 arms licenses and the firearms and the ammunition as stated in the charge-sheet. The accused had stated that present case was a peculiar case in which neither complaint nor RC were proved. The prosecution continued without obtaining consent from competent Authority of Government of Nagaland, which is mandatory as per Section 6 of Delhi Special Police Establishment Act (in short DSPE). He has further stated that the proceedings continued despite having been dropped by statement of Government of Nagaland before Hon'ble High Court in Civil Writ Petition No.2702/1988, which was final and binding on CBI. He had further stated that his defense had been made helpless by the prosecution by declaring that they had no other document available in the arms branch except the arms register and he was deprived of producing certain material which was in his favour.

15. Though appellant/accused, in his defense, did not examine any witness but has relied upon the orders passed by Hon'ble High Court of Delhi in Civil Writ Petition No. 2702/1988 between 29.11.1988 to 02.04.1990, order dated 02.04.1990 in CM No. 1609/1990 and copy of CM No.1609 filed in Civil Writ Petition No. 2702/1988 along with copy of affidavit dated 30.03.1990.

16. After completion of trial and after hearing both parties, Ld. Trial Court was pleased to acquit the accused/appellant in respect of offense u/s 420 and 467 IPC but convicted u/s 417 r/w section 415 IPC with the help of Section 222 of CrPC. Appellant/accused was also convicted by the Ld. Trial Court for offenses defined under Section 471 IPC r/w section 467 IPC for having knowingly and dishonestly used forged license to purchased two weapons and under Section 25 of Arms Act for having possessed more firearms than permissible limit of three. Appellant/accused was sentenced accordingly as noted above.

17. Aggrieved from his conviction and sentencing appellant/accused field the present appeal. Apart from grounds for the severity of punishment awarded, most of the grounds of the appeal raised by appellant are those contentions which were not accepted by the Trial Court. All the contention and grounds of appeal as raised by appellant shall be dealt with at the relevant place in this judgement, if required.

18. Arguments addressed by Ld. Counsel for appellant as well as by Ld. PP for CBI, were heard at length. Trial Court record perused. Respective written submissions and oral submissions taken into consideration.

19. The grounds of appeal for challenging the judgement of conviction are though numerous but can be conveniently divided into two groups namely grounds of appeal covering pure question of law and grounds of appeal covering mixed question of law and facts involving and relating to appreciation of evidence.

20. The foremost and most bitting grounds of appeal involving pure question of law, lays challenge to the competence of the investigating agency CBI to carry on investigation and file report under Section 173 CrPC. By referring to Section 6 of the DSPE Act, 1946, Ld. Counsel for the appellant Sh. Mahipal Ahluwalia contended that investigation agency (CBI) had no power to exercise its investigative power within the State of Nagaland without the consent of the Government of that State. He strongly submitted that it has come in evidence and even otherwise it is a matter of record that on 23.08.1989 Government of State of Nagaland had withdrawn its consent dt. 16.05.1988 granted to the agency to investigate into alleged offense allegedly committed by the appellant/accused. Once

permission was withdrawn by the State Government, he submitted, CBI was left with no right to further carry on the investigation into the alleged offense and therefore, chargesheet filed pursuant to the said investigation has no legal basis to stand and therefore, entire trial and conviction of the appellant is illegal and against the law.

21. In line with above grounds of appeal is the another ground of appeal, but independent of the former, to the effect that appellant herein had filed Civil Writ Petition bearing No. 2702/1988 before the Hon'ble High Court of Delhi at New Delhi for quashing of the present RC against the appellant, wherein apart from CBI and others, State Government of Nagaland was also party and on 02.04.1990 State Government of Nagaland submitted to the Hon'ble High Court that it had dropped proceedings against the appellant and upon the submission of the Government of Nagaland appellant did not press his said writ petition on 02.04.1990. But surprisingly neither CBI opposed the said submission of the Government of Nagaland nor did it press its own application bearing CM No.1609/90 whereby it was seeking permission of the court to continue with investigation against the appellant in the present RC. Ld. Counsel for the appellant Sh. Mahipal submitted that once Government of Nagaland dropped the proceedings against the appellant and CBI acquiesced with the same by not pressing its

own application bearing CM No. 1609/90 then it is illegal on the part of the CBI to further investigate the case and file chagesheet without the permission of the court for the continuance with investigation.

22. Qua the above stated two forcefully raised grounds of appeal, Ld. PP Sh. Pramod Singh submitted that above stated two grounds of appeal were not sustainable in law as both the contentions/grounds of appeal were no more *res-integra* as both the said contentions were dealt with by the Hon'ble High Court and were rejected. He submits that once those contentions have been rejected by the Hon'ble High Court and there is no change of circumstance or fresh materials on record, there is no legally justifiable ground to revisit the said contentions or to take different view than the view taken by the Hon'ble High Court on the subject. He further submitted that said contentions were dealt with by the Ld. Trial Court vide its orders dt 4.4.97 and 30.01.2010. He further submits that revision petition against the order dt 04.04.97 was dismissed by the Hon'ble High Court vide order dt 26.09.2001 and SLP against the order dt 26.09.2001 was dismissed by Hon'ble Apex Court vide its order dt 22.04.2002. He further submitted that revision against the order dt 30.01.2010 was dismissed by Session Court on 26.11.2010 and petition bearing Crl. M.C. 940/2011 against the order dt 26.11.2010 was dismissed by Hon'ble High Court vide

its order dt 01.10.2013. SLP preferred against the order dt 01.10.2013 also came to be dismissed. Hence, he submitted that above two contentions of the appellant are no more sustainable in law and liable to rejected outrightly.

23. On thoughtful consideration of the contentions of both the counsel for the parties, this Court finds itself in agreement with the Ld. PP for the State that both the above stated grounds of appeal are liable to be rejected as the same have already been dealt with by higher Courts and no new facts, evidences or materials, since the passing of those orders, have come before the trial court or this Court to have different view than the view taken by Hon'ble High Court vide its order dt 01.10.013 in Crl M.C. 940/11.

24. Ld. Trial Court vide its order dt 30.01.2010 and Session Court vide its order dt 26.11.2011 held that permission/consent under Section 6 DSPE Act once granted cannot be revoked with retrospective effect and hence consent withdrawn on 23.08.1989 would not have retrospective effect. Above said view of the Ld. Trial Court as well of the Session Court was duly approved by the Hon'ble High Court in its order dt. 01.10.2013 in Crl. M.C. 940/11 filed by the appellant against the order dt. 30.01.2010 and 26.11.2010. Since then there is no change in the circumstance or law or legal principle and therefore, there is

nothing for this Court to take different view. Hence said contention/grounds of appeal is hereby rejected.

25. With respect to contentions that CBI was bound by the submission of the Government of Nagaland qua the dropping of proceedings against the appellant as recorded in the proceedings dt 02.04.1990 of W.P. (Crl) No. 2702/1988 and that CBI did not press its application bearing CM No.16/09/90 seeking permission to continue with investigation, though Hon'ble High Court has also dealt with the same in its order dt 01.10.2013 thereby rejecting the contention of the appellant and this court has no reason to take different view than the one taken by the Hon'ble High Court, nevertheless it is sufficient to say that in law an FIR has only two fates that is to say it will either culminate into a report under Section 173 CrPC or it may be quashed by the Hon'ble High Court. There is no third fate of an FIR at investigation stage. Thus to say that CBI was bound by the submission of the Government of Nagaland or by the non pressing of its application bearing CM No. 1609/90 or that it has no right of further investigation, is preposterous. Hence, in view of the above discussion appellant's challenge to the judgment on above ground is not sustainable.

26. Another grounds of appeal purely legal in nature and meekly asserted was lack of sanction under Section 197 CrPC. It is the

contention of the appellant that appellant was admittedly a government servant and therefore, cognizance of alleged offense should have been taken only after obtaining necessary permission from Competent Authority as required under Section 197 CrPC. It is his submission that since he was posted in Nagaland which was then infested with militant insurgency and therefore in order to discharge his official duty fearlessly he was required to have firearms for his self defense and therefore alleged offense, if any, was committed during the discharge of his official duty.

27. Ld. PP Sh. Pramod Singh submitted that judgement cannot be assailed on the above ground firstly because no such plea was taken before the Ld. Trial Court and hence no fresh plea for the first time can be raised in appeal. Secondly, commission of cheating etc. cannot be said to have been part of his official duty. Hence, he has submitted that this ground of appeal is liable to be rejected.

28. This Court is not in agreement with the contention of Ld. PP that since lack of sanction under section 197 CrPC was not agitated before Ld. Trial Court and therefore same cannot be agitated for the first time in appeal before the Appellate Court. It must be borne in mind that Section 197 CrPC bar jurisdiction of the Court to take cognizance and since it relates to

competence of the court therefore it can be raised at any stage even if it was inadvertently not raised before the Trial Court. However, this Court is in agreement with Ld. PP that act of alleged cheating or act of acquiring firearms for self protection cannot be said to be part of his official duty or that such act was required to be performed for fearless discharge of his responsibility of his office. Hence, there was no requirement for any sanction under Section 197 CrPC and accordingly, above contention of the appellant is hereby rejected.

29. Other grounds of appeal involving mixed questions of law and facts and involving/relating to appreciation of evidence have been discussed hereinafter at appropriate place.

30. Perusal of impugned judgment shows that Ld. Trial Court categorically held that prosecution had failed to prove that application Ex PW4/A was the application vide which appellant had applied for fourth arms license beyond the permissible limit of his three firearms and wherein, as per prosecution, appellant had left blank the column No. 13 and 16 thereby concealing the factum of his possession of three firearms under three license.

31. It also held that prosecution failed to prove that appellant had left blank column No. 13 and 16 of the application which required the applicant to declare the firearms which he already

possessed by then and as to status of his previous license applications. Ld. Trial Court, thus, clearly held that prosecution had failed to prove that appellant dishonestly and fraudulently induced the authority to issue license No. 9315NH/New dt 24.09.1985 Ex.PW2/C and thus acquitted him of the charge u/s 420 IPC.

32. Ld. Trial Court further categorically held that prosecution had failed to prove that the alleged manipulation/addition in license No. 9315 Ex.PW2/C was in the hand of appellant and thus appellant was also acquitted of the offense u/s 467 IPC.

33. Prosecution did not file any appeal against the acquittal of the appellant in respect of offenses under Section 420 and 467 IPC and thus, the findings recorded by Ld. Trial Court qua appellant's acquittal has attained finality.

34. Further perusal of the judgment shows that even though no specific charge was framed against the appellant but with the help of Section 222 of Cr.P.C, appellant/accused was convicted under Section 417 IPC r/w section 415 IPC. Ld. Trial Court was of the view that since the appellant knew that the license No. 9315NH/New dt 24.09.1985 Ex.PW2/C had addition/alteration amounting to forgery and despite knowing the addition/alteration and that it was in respect of only one

firearm, he induced the arms seller to sell him one more firearm in respect of which no license was granted to him and, therefore, he committed offense under Section 417 IPC read with Section 415 IPC by inducing the seller of the weapon thereby causing wrongful loss to seller and wrongful gain to himself.

35. Further, Ld. Trial Court had held appellant guilty of using forged documents as he knew that license No. 9315NH/New dt. 24.09.1985 Ex.PW2/C was only in respect of one firearm and contains addition/alteration amounting to forgery but despite that he used the said license to purchase two firearms and thus he committed the offense as defined under Section 471 IPC r/w section 467 IPC.

36. Ld. Trial Court in paragraph No. 34 of the impugned judgment has discussed as to how it arrived at the conclusion to hold that fourth license Ex. PW2/C was granted for one firearm and appellant knew that it had addition/alteration amounting to forgery but despite that he used it to purchase two firearms. For better appreciation paragraph No. 34 of the impugned judgement is quoted herein below:-

> *"34. It is admitted fact that accused was possessing four firearms licenses. The letter Ex.PW4/D was for granting license for one .30 bore rifle. Pursuant to letter Ex. PW4/D, license Ex.PW2/C was*

granted to the accused. The said fact has also been admitted by the accused as accused has taken the defense that license Ex.PW2/C was granted to him against application as mentioned in Ex.PW4/D, which was proper and complete application.

Vide letter Ex.PW4/D, the Commissioner, Nagaland had given the approval for grant of license of .30 bore rifle to the accused and accordingly, license Ex.PW2/C was granted to accused. Therefore, Ex.PW2/C was granted for only .30 bore rifle and was not granted for N.P. Bore Rifle. However, in license Ex.PW2/C, at page No. 5 'N.P. Bore Rifle' is inserted to reflect that license Ex.PW2/C was granted for two Firearms. But, it is clear from Ex.PW4/D that the license Ex.PW2/C was granted only for one firearm. Therefore, it is clear from the record that alteration has been made in license Ex.PW2/C and license Ex.PW2/C was never meant for N.P. Bore Rifle.

Prior to the grant of license Ex.PW2/C on 24.09.1985, accused was possessing three other firearm licenses. The license Ex.PW7/C was granted on 07.02.1985, license Ex.PW7/D was granted on 08.03.1972, license Ex.PW7/E was granted on 28.03.1978. Therefore, accused was well versed with the procedure for grant of firearm licenses. Further, accused has admitted that license Ex.PW2/C was granted to him on the strength letter Ex.PW4/D and the application mentioned therein. As per letter Ex.PW4/D, the license Ex.PW2/C was granted only for .30 Bore Rifle. The license was granted on the strength of application as mentioned in Ex.PW4/D and the license, if granted, is for the weapon as mentioned in the application. Therefore, when the license Ex.PW2/C was granted for .30 Bore Rifle, it naturally flows that the accused had applied for the same. The accused has not produced any document in his defense to show that he had ever applied for N.P. Bore Rifle or he had ever made an application for the inclusion of N.P. Bore Rifle in license Ex.PW2/C and such inclusion was allowed by the Authorities. The accused has not produced any document to show that license for N.P. Bore Rifle was ever granted to him. Since, neither the accused applied for N.P. Bore Rifle License nor such license was ever granted to him, there is clear alteration made in the license Ex.PW2/C."

37. Ld. Counsel for appellant Shri Mahipal Ahluwalia has submitted that Ld. Trial Court erred in recording finding that

appellant had admitted that license Ex. PW2/C was granted to him against 'application' as mentioned in Ex PW4/D which was proper and complete. He submitted that nowhere had appellant admitted that the 'application' mentioned in Ex. PW4/D was the one through which he had applied for fourth license nor had he admitted that approval for his fourth license was conveyed/approved vide Ex. PW4/D. Ld. Counsel for appellant further argued that even otherwise Ex. PW4/D was never proved by the prosecution as admittedly file/record from which Ex. PW4/D was allegedly prepared was never produced. He further submitted that Ex PW4/D is neither photocopy nor carbon copy so as to be replica of original and thus to qualify for being proved as secondary evidence.

38. Ld. Counsel for appellant further submitted that examination of PW4 Banuo Z Jamir only proved that he certified Ex PW4/D as true copy but PW4 cannot be taken to have proved it's contents even if he had stated to have certified it after seeing the office record unless that office record was produced in the court. He further submitted that PW4 at no point of time deposed that it was he who himself prepared Ex. PW4/D from original. Thus, he submitted that Ld. Trial Court grossly erred in holding that license No. 9315NH/New Ex. PW2/C was issued to the appellant vide approval Ex. PW4/D and it is further erroneous to hold on the basis of Ex. PW4/D that fourth license was only in respect of

one firearm i.e. .30 bore Rifle. He thus contended that unless prosecution proved beyond doubt that license No. 9315NH/New Ex. PW2/C was only in respect of one firearm and not in respect of two firearms and that appellant knew that it was only in respect of one firearm, appellant cannot be held guilty of offense either under Section 417 r/w 415 IPC or under Section 471 IPC r/w Section 467 IPC.

39. On the contrary Ld. PP for CBI Sh. Pramod Singh contended that once it has come to be proved that appellant applied for fourth license despite being in possession of three firearms vide three different arms licenses Ex PW7/C, Ex. PW7/D and Ex. PW7/E; that once it has come to be proved that appellant purchased two firearms against fourth license and that fourth license Ex. PW2/C apparently contains addition of expression "& N. P. Bore Rifle" in different ink, then it is for the appellant to prove that he had applied for fourth license in respect of two firearms and insertion was made officially. He submitted that during cross examination of prosecution witnesses defense did not even give a suggestion to any of the prosecution witnesses that he had applied for two firearms and that fourth license Ex. PW2/C was in fact issued in respect of two firearms.

40. Ld. PP for CBI further submitted that prosecution might have failed to prove that forgery in the license Ex PW2/C was done by

the appellant but forgery in the fourth license Ex. PW2/C had been proved and that appellant purchased two firearms against the license Ex. PW2/C which admittedly contained addition of expression "& N. P. Bore Rifle".

41. Ld. PP for CBI further submitted that undisputedly appellant was senior IAS officer and amendment by way Ordinance to Arms Act was brought in operation in 1983 and therefore, he must prove that what extraordinary circumstances existed for him in 1985 to apply for arms beyond the permissible limit of three firearms. He, therefore, contended that when it was impermissible for any one to have more than three firearms then certainly license for fourth firearm must have been applied by him in extraordinary circumstance and when license is issued in extraordinary circumstance then it cannot be for two weapons. Hence, it is but natural that the fourth license Ex. PW2/C was only for one fire weapon. He quickly added that he may not be taken to mean as saying that law permits grants of more arms than permitted if extraordinary circumstances exist. It is his submission that since law does not permit possession of more firearms than three, then certainly fourth license for one firearm or two firearms must have been granted due to misrepresentation on the part of the appellant about his possession of three firearms which he possessed under three separate licenses Ex PW7/C, Ex. PW7/D and Ex. PW7/E.

42. Ld. PP for CBI further submitted that arms rules also do not permit grant of license beyond one firearms. He submitted that as per rules one license is issued for only one firearm/weapon and thus there cannot be a license for two firearms/weapons except for the reason of forgery/addition/alteration in the license Ex. PW2/C. He further submitted that ignorance of law is not an excuse and appellant being an IAS officer all the more cannot take the plea that he did not know that fourth firearm was impermissible or that rules did not permit more than one firearm under one license. He, therefore, contended that there was no error in findings of the Ld. Trial Court that appellant dishonestly and fraudulently induced the arms seller to sell him two firearms against license Ex PW2/C knowing very well that license was only in respect of one firearm only and thus Ld. Trial Court rightly held him guilty for offense under section 417 IPC r/w 415 IPC and under section 471 r/w 467 IPC.

43. On perusal of impugned judgement this Court finds that Ld. Trial Court categorically returned findings to the effect that prosecution failed to prove that appellant had applied for fourth license vide application Ex. PW4/A leaving column No. 13 and 16 blank and thus he induced authorities to issue him license in excess of three firearms. Prosecution did not challenge the said findings by way of appeal. Hence, the said findings stands final.

44. The necessary conclusion emerging from above is the fact that there is no evidence on record to prove as to whether appellant had applied fourth license for one firearm or two firearms. The contention of Ld. PP that once it has been proved on record that appellant had applied for fourth license then it is for the appellant to prove that he had applied for two firearms, is not sustainable as it is always the prosecution who has the onus to prove its allegation beyond reasonable doubt against the accused person. It is true that from the cross examination of prosecution witnesses and statement of the appellant under Section 313 CrPC it is not specifically made out that appellant had set up his defense that he had applied for fourth license for two firearms but it is settled law that case of the prosecution has to stand on its own legs and any weakness or failure to prove his defense by the accused, would not *ipso facto* prove the case of the prosecution.

45. PW4 Banuo Z Jamir on whose reply to the query of CBI present FIR was registered, in his examination-in-chief deposed that license bearing No. 9315NH/New dt. 24.09.9185 (*Ex. PW2/C*) was issued to appellant and against the said license, the details of two arms have been entered. He had further deposed on seeing the license Ex. PW2/C that the license bearing No. 9315NH/New was with respect to only one firearm and it was not permissible to get two firearms issued against

one license. He further deposed on seeing page No. 5 of license Ex. PW2/C that writing *(& N. P. Bore Rifle)* at point A to A1 was not in the handwriting of Mrs. Sanu Zhasa, the dealing clerk. He further deposed that the mentioning of 'each' at point B and B1 on page No. 5 of license Ex. PW2/C was not normal as only one firearm could be held against one license.

46. In cross examination in response to specific query as to whether letter Ex. PW4/D was received for grant of license pursuant to application Ex.PW4/A, PW4 Banuo Z Jamir deposed that he was not sure but on the basis of the dates on the application and the letter it was presumed that the letter Ex.PW4/D was received for application Ex.PW4/A. Further in response to suggestion that he was not aware of the truthfulness of the letter Ex PW4/D, he (PW4) deposed that he could not comment on the same as he was not the Deputy Commissioner, Kohima at that time.

47. In this regard another witness examined by the prosecution is PW8 Sachopra Veno who after identifying his signature at point A on license Ex PW2/C, in his examination-in-chief deposed that the number "30" (*appearing on page 5 of the license*) was overwritten but he was not sure if the word "carbine" or expression "& N. P. Bore Rifle" were originally there or were subsequently added. Similar was his reply to the word "each"

which are at points B and B1 at page 5 of license Ex. PW2/C. He further deposed that he was suspecting the genuineness of the number "2000" as appearing at the lower portion of the said page.

48. Thus, it can be seen that testimony of PW8 in chief examination itself remained far short of asserting that license Ex. PW2/C was granted for only one fire weapon and not for two fire weapons. This witness himself was not sure as to whether the expression "& N. P. Bore Rifle" was originally there or was subsequently added.

49. There is no other witness to prove the fact that appellant had applied for the fourth license only for one weapon or that the fourth license Ex. PW2/C was issued for one firearm only. It will be pertinent to note the role of the other witnesses examined by the prosecution. PW1 R. S. Dhillon is witness to search and recoveries made at Delhi residence of the appellant. PW2 V. P. Sawhney, partner of Arms dealing firm, had sold two firearms to appellant against the license Ex. PW2/C. PW3 L. Akato Sema, Addl. Dy. Commissioner, is witness to the fact of having provided information to the CBI regarding three former arms licenses issued in favour of the appellant. PW5 Dr. Aditya Arya had accorded sanction under Section 39 of Arms Act, 1958 to prosecute the appellant under Arms Act. PW6 N.C. Sood is the

Hand writing Expert and he had sought to prove that tempered writing in the license was in the hand writing of appellant. PW7 and PW9 are witness to the search and recoveries made at the residence of accused at Kohima.

50. Thus, except for PW4 and PW8 there is no other witness examined on behalf of the prosecution to prove that fourth license was applied for one firearm only and that fourth license Ex. PW2/C was granted only for one firearm and not for two firearms.

51. Analysis of testimonies of PW4 Banuo Z Jamir and PW8 Sachopra Veno shows that prosecution has neither been able to prove that appellant had applied for only one weapon under the fourth license nor has been able to prove that fourth license was approved vide letter Ex PW4/D and was, thus, granted for only one firearm. PW4 himself was not sure of truthfulness of Ex PW4/D nor the original of PW4/D or its record were produced in court. Hence, irrespective of number weapons applied under the fourth license, prosecution has failed to prove that the approval was only for one firearm under the license Ex PW2/C.

52. Further the contention that Arms rules do not permit more than one weapon under one license, is also not sustainable as the page No. 5 of the license Ex. PW2/C contains in printed form

a heading requiring disclosing of description of each weapon with details. It reads "***Brief description of each weapons with details e.g. identification marks, register number etc.***". Use of words "each weapons" put at rest such contention. If there had been a rule that only one firearm would be issued under one license then there was no need to have such disclosure of each weapons.

53. Further careful perusal of page No. 5 of license No. 9315NH/New dt. 24.09.1985 Ex. PW2/C does reflect that expression "& N. P. Bore Rifle" was penned in different ink but it also shows that said license was actually issued for two weapons. In the license Ex. PW2/C at page No.5 exactly below "***Brief description of each weapons with details e.g. identification marks, register number etc.***" is written in hand as under:-

> *"One .30 Bore Rifle (Carbine) No. -* ***& N. P. Bore Rifle*** *SBBL 275 Bore Rifle By No. 38312 By UnderWood Carbine No. 2790379."*

54. In this hand written portion on page 5 of license Ex PW2/C, it was alleged by the prosecution that expression "& N. P. Bore Rifle" was dishonestly and fraudulently added by the appellant in his own hand writing so as to make the said license for two weapons. If the expression "& N. P. Bore Rifle" is removed from this hand written portion, even then it will be seen that license

was issued for two weapons i.e. ".30 bore Rifle Carbine" and "SBBL 275 Bore Rifle" as name of two weapons has been mentioned in untempered portion. Not only this, mark/make number of two weapons i.e. 38312 and 2790379 are also mentioned in untempered portion. If the said license had been issued for one weapon only, then only one type of weapon i.e. either ".30 bore Rifle Carbine" or "SBBL 275 Bore Rifle" would have been mentioned at page 5 of Ex PW2/C. Similarly, if Ex PW2/C had been for one weapon then weapon mark/make number should have been mentioned either as 38312 or as 2790379. Mentioning name of two rifles as well as their respective mark/make numbers in untempered portion in license Ex PW2/C leaves no one in doubt that it was issued for two weapons and not for one weapon as alleged by the prosecution. Therefore, possibility cannot be ruled out that expression "& N. P. Bore Rifle" was added later officially - may be after knowing the name of other weapon.

55. Further PW2 V. P. Sawhney, the partner of Arms dealing firm M/s B.R. Sawhney and Co., had deposed that against the license No. 9315NH/New Ex. PW2/C he had sold to appellant one 30 US underwood carbine rifle No. 2790379 for Rs 7500/- and one SBBL 275 Bore BRNO rifle No. 38312 for Rs. 10,000/- apart from ammunitions. Description as well as mark/make of both these weapons have been mentioned in the license Ex PW2/C in

unadulterated/untempered form. Further PW4 Banuo Z Jamir categorically deposed that against the said license details of two firearms have been entered in the office record. If the license Ex.PW2/C had been issued for one weapon only then details of two firearms against the said license could not have been mentioned in the office record. Even in the reply dt 20.08.1987 mark- X sent by PW4 Banuo Z Jamir in response to the query of CBI which reply was made basis of present FIR, it has been mentioned that records of the office indicate that he (appellant) acquired Rifle No. 38312 of .30 Bore and Rifle No. 2790379 of 275 Bore SBBL against the said license. If the license was for one weapon then office record could not have shown acquisition of two weapons against the said fourth license.

56. Thus, in view of the above discussion and reasoning it can definitely be concluded that license No. 9315NH/New dt 24.09.1985 was issued for two fire weapons i.e. .30 Bore Rifle (Carbine) and SBBL 275 Bore Rifle by Nos. 2790379 and 38312 respectively. It can also be concluded that appellant must have applied the fourth license for two weapons otherwise fourth license No. 9315NH/New dt 24.09.1985 Ex. PW2/C would not have mentioned name of two weapons with their respective make/mark number in untempered portion and office record would not have shown entries of two weapon against the said license.

57. Once prosecution failed to prove that license bearing No. 9315NH/New dt. 24.09.1985 Ex. PW2/C was in respect of only one firearm, appellant cannot be accused of having induced the arms dealer to sell him two weapons under the license bearing No. 9315NH/New dt 25.09.1985 Ex PW2/C as said license was in fact in respect of two weapons as has been held herein before and therefore appellant cannot be held guilty for having knowingly used forged/false license and induced the seller to sell him two weapons.

58. Thus, the Ld. Trial Court committed error in holding the appellant guilty of offense under Section 417 IPC r/w Section 415 IPC and offense under Section 471 IPC r/w Section 467 IPC. Consequently finding of the Ld. Trial Court to this effect is hereby set aside and appellant is hereby acquitted of offense under Section 417 IPC r/w Section 415 IPC and offense under Section 471 IPC r/w Section 467 IPC.

59. Now the next question is whether appellant is guilty of offense under Section 25 of the Arms Act, 1959 for having possessed more firearms than three in violation of Section 3 of the Arms Act and whether the prosecution against the appellant was legally instituted in respect of the offense under Section 25 of Arms Act with valid sanction as required under Section 39 of the Arms Act.

60. The fact that on the date of raids and registration of present RC appellant was in possession of more than three firearms which were found and seized during the raids, is borne out not only from the evidence on record but also from the admission on the part of the appellant when it is argued on his behalf that he had transferred the excess two firearms in favour of his wife and son by relying upon letter dt. 5.05.1988 Mark-X1 and order dt. 23.08.1989 Mark DWPP.

61. Mark-X1 and Mark- DWPP are the documents produced by the appellant himself during cross examination of prosecution witnesses and therefore appellant is bound by the contents thereof. Mark X-1 is the letter written by appellant to Chief Secretary, Government of Nagaland for the surrender of his excess arms. In the said letter he admitted of having possession of two more firearms than the permissible limits of three firearms. In the said letter he had also mentioned that he having come to know of the restriction laid down by the Government of India on the number of arms to be possessed legally, he wished to surrender the excess two firearms. Mark DWPP is the order of the Government of Nagaland whereby it ordered transfer of two firearms with license each in favour of wife and son of the appellant.

62. Thus, it stood proved beyond reasonable doubt that on the date of raids or registration of present RC appellant was in possession of five firearms beyond permissible limit of three and thus there was violation of Section 3 of the Arms Act punishable under Section 25 of the Arms Act.

63. In view of the above there is no need to discuss at length the evidence led by prosecution to find out if prosecution successfully proved the possession of firearms by appellant beyond the permissible limit of three as restricted by Section 3 of the Arms Act. Even otherwise during the course of argument before this Court it was conceded by the Ld. Counsel for the appellant that appellant did not dispute possession of four arms licenses and five firearms on the date of registration of present RC/FIR.

64. Nevertheless, appellant/accused through his Counsel Sh. Mahipal Ahluwalia did try to convince the Court that prosecution has failed to prove the raids in which 5 firearms allegedly held by the appellant were found and seized and that prosecution failed to prove the firearms held by the appellant. Such contention, however, is bound to be rejected due to reason discussed above as well as on account of the fact that all five firearms (Ex.P1, P2, P3, P4 and P5) were produced in the Court and were duly identified by witness PW7 Sh. N. N. Jain, a

member of raiding team and at no point of time appellant deny that they belonged to him. Further, at no point of time during trial appellant contended that all the five fire weapons were in his physical possession and not seized by CBI as claimed by the prosecution.

65. Prior to 1983 there was no restriction on the numbers of firearms to be legally possessed by a person. However, in the year 1983 by way of Ordinance an amendment was carried out in the Arms Act thereby amending Section 3 of the Arms Act and restricting the number of firearms to three to be possessed legally by a person. Those who were legally in possession of more arms than three were given 90 days time to surrender the excess firearms with license w.e.f. 22.06.1983. The Ordinance was replaced with the Arms (Amendment) Act, 1983 confirming the amendment w.e.f. 22.06.1983.

66. In the present case appellant acquired the fourth license on 24.09.1985 and pursuant thereto acquired the excess two firearms on 30.09.1985 much after the implementation of the restriction on the number of firearms to be legally possessed. Hence, the moment appellant acquired the fourth and fifth firearms on 30.09.1985 in excess of three which he already possessed by then, he violated Section 3(2) of the Arms Act punishable under Section 25 particularly under Section 25(1B)

(a) of the Arms Act and he continue to do so till he wrote his letter dt. 05.05.1988 Mark-X1 when he expressed his desire to surrender his excess two weapons following his new found knowledge of the restriction on the number of weapon one could legally possess. Therefore, no fault could be found with the findings/reasoning of the Ld. Trial Court in returning findings that it stood proved that appellant clearly violated Section 3 of the Arms Act punishable under Section 25 of the Arms Act.

67. It must be noted that it was finally conceded by the appellant that amendment to the Arms Act was applicable to the State of Nagaland. Therefore, the plea that there was confusion among the people and Government in the State of Nagaland about the applicability of amendment in the Arms Act in the State of Nagaland, would not washed away the commission of offense, even if such confusion is proved on record. Of course such plea may be taken into account while deciding quantum of punishment, if held guilty.

68. Further, the fact that appellant was in possession of excess two firearms following the license granted to him would not absolve him of his offense as the language employed in Section 3(2) of the Arms Act cast a duty on the person willing to acquire firearms, to not acquire more firearms than three. Section 3(2) of the Arms Act read as under:-

> "(2) *Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (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 purposes 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 armoury referred to in that sub-section.*"

Thus, the use of expression "*no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms*" makes it absolutely clear that it cast a duty on the person to not acquire more than three firearms irrespective of number of license granted or number of arms granted under a license. Thus, after the amendment brought out in 1983 in the Arms Act, having license to possess firearms is no defense if one is found in possession of more firearms than three.

69. Now, the next question is whether the prosecution qua the offense under Section 25 of the Arms Act was legally instituted against appellant as Ld. Counsel for appellant has strongly argued that sanction dt 21.08.1996 Ex. PW5/A was illegal and invalid and post institution of the prosecution. He further

submitted that there cannot be institution of prosecution qua the offense under Section 25 of the Arms Act without valid previous sanction under Section 39 of the Arms Act.

70. Ld. Counsel for appellant had submitted that qua the offense under Section 25 of the Arms Act, CBI after completion of the investigation initially sought sanction under Section 39 of the Arms Act from the Government of Nagaland which was declined on 24.07.1989 as by that time Government of Nagaland had decided to drop proceedings against the appellant and had withdrawn consent given to DSPE (i.e. CBI) under Section 6 of the DSPE Act. He further submitted that this fact is admitted by CBI in its application bearing CM No. 1609/90 filed by it in Civil Writ Petition bearing No. 2702/1988.

71. Ld. Counsel for appellant Sh. Mahipal Ahluwalia further submitted that once sanction under Section 39 of the Arms Act was declined by the competent authority it was not open to said authority or any other authority to revisit the issue of sanction on same material and in the absence of fresh material on record. He further submitted that CBI having failed to secure sanction under Section 39 of the Arms Act from Government of Nagaland, approached DCP, New Delhi District, New Delhi and concealing the factum of refusal of sanction by Competent Authority, Nagaland, obtained sanction under Section 39 of the

Arms Act from Sh. Asad Farooqui, the then DCP, New Delhi District on 18.12.1992 and filed chargesheet in the Court on 23.12.1992. On 24.12.1992 Ld. CMM took cognizance of the offense under Section 420, 467 and 471 IPC and 25 of the Arms Act.

72. Ld. Counsel for appellant further submitted that on 20.12.1996 CBI filed another fresh sanction dt. 21.08.96 Ex. PW5/A under Section 39 of the Arms Act obtained from PW5 Dr. Aditya Arya, the then DCP, New Delhi District, New Delhi. He further submitted that no reason was cited by CBI as to why it filed fresh sanction dt. 21.08.1996.

73. Ld. Counsel for appellant Sh. Mahipal Ahluwalia further submitted that it was during the course of argument on the question of framing charge or discharge that CBI/prosecution explained that since the sanction dt. 18.12.1992 under Section 39 of Arms Act from DCP Sh. Asad Farooqui was defective, therefore, it had secured fresh sanction dt 21.08.1996 from DCP Sh. Aditya Arya and Ld. CMM vide his order dt 04.04.1997 *interalia* held that cognizance qua offense under Section 25 of the Arms Act taken on the basis of sanction dt 18.12.1992 was non-est in the eyes of law. Ld. CMM, however, vide said order took cognizance of the offense under sanction 25 of the Arms Act on 04.04.1997 almost 4 and half years after the charge sheet

was filed.

74. In nutshell on the point of sanction Ld. Counsel for the appellant submits three points. Firstly it was not open to the prosecution to seek required sanction dt. 18.12.1992 or dt. 21.08.1996 from DCP on the same material when it was refused by the Government of Nagaland on 24.07.1989. Secondly, it has come in the testimony of PW5 Dr. Aditya Arya, the DCP of New Delhi District that he was not made aware of the previous refusal of sanction by the Government of Nagaland nor about the grant of defective sanction by DCP Sh. Asad Farooqui. He, therefore, contends that DCP Aditya Arya did not have before him complete facts/records to apply his mind, which was an essential requirement for the validity of the sanction. It has been further submitted that PW5 DCP Aditya Arya admitted in his cross examination that he was aware that if once sanction had been refused by a competent authority then it cannot be revisited on the same material. Thirdly, he submitted that Section 39 of the Arms Act require prior sanction whereas Sanction dt. 21.08.1996 relied upon by the prosecution is post filling of the chargesheet and therefore institution of the prosecution qua the offense under Section 25 of the Arms Act is bad in law and the Ld. Trial Court had no jurisdiction to enter into the trial of the appellant in respect of offense under Section 25 of the Arms Act. Hence, he submits that conviction of the

appellant qua the offense under Section 25 of the Arms Act is liable to be set aside.

75. On the contrary Ld PP for the CBI Sh. Pramod Singh submitted that question of validity of sanction has been decided twice upto Hon'ble Supreme Court and therefore, appellant cannot agitate it again and again. He submitted that question of validity of sanction was first rejected by Ld. Trial Court vide its order dt 04.04.1997 which was challenged by way of revision before the Hon'ble High Court and same was dismissed vide order dt 26.09.2001 and SLP preferred against the order dt 26.09.2001 was also dismissed by the Hon'ble Supreme Court vide order dt 22.04.2002. He further submitted that issue validity of sanction under Section 39 of the Arms Act was again raised before the Ld. Trial Court and Ld. Trial Court vide order dt 30.01.2010 did not find the sanction invalid. Appellant preferred revision against the order dt 30.01.2010 before the Session Court but same was also dismissed vide order dt. 26.11.2010. Against the order dt 30.10.2010 and 26.11.2010 appellant preferred petition bearing Crl. M.C. No. 940/2011 under Section 482 CrPC before Hon'ble High Court but same was also dismissed vide order dt. 01.10.2013 wherein also question of validity of sanction was discussed and rejected. Appellant preferred SLP No. 9143/13 before the Apex Court but same was also dismissed. He further submitted that the

issue of validity of sanction was again discussed at length and rejected by the Ld. Trial Court in its impugned judgment giving legally sound reasoning. He, therefore, contends that there is no change in the facts and material or in law and therefore there is nothing to take different view than the one taken by various Courts in the above noted orders and impugned judgement. He further submitted that neither the institution of the prosecution against the appellant qua the offense under Section 25 of the Arms Act was bad nor was court incompetent to enter into trial qua the said offense in the absence of alleged previous sanction.

76. Ld. Counsel for the appellant in rebuttal submitted that none of the above orders as cited by Ld. PP is binding on this Court as the orders of the Ld Trial Court was on the basis of its *prima facie* view of the material before it and orders of Session Court and Hon'ble High Court were passed while exercising revisional jurisdiction which has limited scope for interference and so was the jurisdiction of the Hon'ble Supreme Court then. He further submitted that this Court is exercising appellate jurisdiction which has wider scope of interference than the revisional jurisdiction. He further submitted that in any case there is change of circumstance as new material in the testimony of PW5 DCP Sh. Aditya Arya has come who in his cross examination admitted that he was not made aware of the previous refusal by the Government of Nagaland or about the

previous sanction by DCP Sh. Asad Farooqui which fact was neither available before the Session Court nor before High Court or before Apex Court. He further submitted that impugned judgement is obviously under challenge before this court and therefore it is not binding on this Court if it finds that any issue has not been decided correctly in accordance with law.

77. This Court find force in the contention of Ld. Counsel for the appellant that scope of appellate jurisdiction is wider than revisional jurisdiction. Similarly, it finds force in the contention that it can take different view (other than the *prima facie* view taken on any issue by higher Courts in revisional jurisdiction on the basis of the material before them) after appreciation of evidence or if new material comes on record in evidence or otherwise. Hence, it has got to be seen what was decided in the orders relied upon by the Ld. PP and whether there is any new material calling for taking different view than already taken.

78. In the order dt. 04.04.1997 it was specifically submitted by the then Ld. PP that the sanction dt 18.12.1992 granted by DCP Sh. Asad Farooqui was defective and accordingly another sanction dt 21.08.1996 was obtained from DCP Aditya Arya. The then Ld. CMM in his said order held that cognizance qua the offense under Section 25 of the Arms Act taken on 24.12.1992 on the basis of sanction dt. 18.12.1992 was non-est. He took cognizance

of the said offense on 04.04.1997 on the basis of sanction dt 21.08.1996 Ex.PW5/A. Prosecution/CBI relies upon the sanction dt. 21.08.1996 (filed on 20.12.1996) and have completely disowned the sanction dt. 18.12.1992 being defective. Petitioner challenged the said order dt. 04.04.1997 by way revision petition bearing No. CRLR No. 240/97 before the Hon'ble High Court which was dismissed by it on 26.09.2001. SLP preferred against the order dt. 26.09.2001 came to be disposed of by Apex Court on 22.04.2002 with liberty to the appellant to raise all contentions with regard to the validity of sanction before the Ld. Trial Court.

79. Pursuant to liberty granted to the Validity of sanction under Section 39 of the Arms Act with respect to offense under Section 25 of the Arms Act, issue of validity of sanction was again raised before the Ld. Trial Court at the time of argument on framing of charge. Ld. Trial Court vide its order dt 30.01.2010 rejected the contention against the validity of sanction under Section 39 of the Arms Act in following words:-

> *"9. Ld. Counsel for the accused S.S. Ahluwalia has further submitted that it is the own case of the prosecution that the accused was working in the State of Nagaland and in view of section 39 of Arms Act, it was mandatory to obtain sanction from D.C. Kohima. It is further submitted that CBI had approached the Deputy Commissioner Kohima for prosecution of the accused and for grant of sanction which was refused by the Deputy Commissioner Kohima on 24.07.1989. It is argued that this fact was accepted by CBI in Civil. Misc. No. 1609 of 1990. Ld. Defense counsel has argued that when the sanction for*

prosecution has been refused by the competent authority, even the same competent authority can not review its order nor any other authority can accord sanction for prosecution in that case. He has relied on the judgment titled as ***Jagdish Prasad Sharma Vs. reported as State 1997 (1) CLR 152.*** *It has further been submitted that after refusal of sanction by D.C. Kohima, the CBI got sanction for prosecution issued by Deputy Commissioner of Police, New Delhi on 18.12.1992. It is argued that DCP, New Delhi is not the competent authority to grant sanction in as much as accused was serving under the Government of Nagaland and not under the Government of Delhi. Further, CBI found the sanction order dated 18.12.1992 to be defective and got fresh sanction issued by Deputy Commissioner of Police issued on 21.08.1996. Reliance has been placed on the Judgment titled as* ***Parmanand Dass Vs. State of A.P. Reported as 1978 SCC(Cri) 482.*** *Ld. defense counsel has argued that once the sanction order is placed before the Court, it can not be revised. On going through the said reliefs, I find that they are not applicable to the facts of the instant case.*

It is the submission of Ld. Prosecutor that the withdrawal of the consent of the act can have only prospective operation and would not affect the matter in which action has already been initiated prior to the order of revocation. It has been submitted that after registration of the case, the investigation has to be completed and CBI was bound to file the report under section 173 Cr.P.C. Ld. Spl. PP has relied upon the judgement titled as ***Kazi Lhemdup Dorji VsCBI JT 1994 (3) SC 140*** *in support of his arguments that the withdrawal of sanction under section 6 of the DSPE would operate only prospectively and not apply to the cases which are pending investigation on the date of issuance of the said withdrawal. In other words once the consent has been given by the Government and the investigation has been commenced, the investigating agency is competent to complete the investigation and to submit final report under section 173 Cr.P.C. Reliance has also been placed on the judgment titled as* ***Vineet Narain & Ors. Vs. Union of India & Anr. (1998) 1 SCC 226.*** *In view of the aforesaid case law relied upon by the prosecution, I find force in his submission and I am of the opinion that accused can not be discharged for the reason that sanction has been withdrawn.*"

80. The Session Court in revision disposed of the said contention in its order dt 26.11.2010 in the following words:-

> *"14. So far as the question of illegality in Section 39 Arms Act is concerned, I am of the considered view that ld. Trial Court has reasonably meted out the submission of revisionist that sate Govt. of Nagaland only was the competent authority to give the sanction for prosecution.*
>
> *15. In the present case, admittedly the sanction for the prosecution of petitioner was refused by the Deputy Commissioner Kohima on 24.07.89. After the refusal of the sanction by the Deputy Commissioner, Kohima the sanction was obtained from DCP, New Delhi on 18.12.92. CBI found the sanction order dated 18.12.92 to be defective and got fresh sanction issued on 21.8.96. I am in agreement with the finding of Ld. Trial Court that withdrawal of the consent would have only prospective operation. Once the sanction has been given by the State Govt. and the investigation has been commenced, the investigating agency has to complete the investigation and to submit final report under section 173 Cr.P.C. Ld. Trial Court has rightly relied upon the judgment of Hon'ble Supreme Court in* ***Vineet Narain & Ors. V. Union of India & Ors. (1998) 1SCC 226 and Kazi Lhemdup Dorji V. CBI JT 1994(3) 140, wherein it has been held by Hon'ble Supreme Court that the withdrawal of sanction U/S 6 of DSPE would operate only prospectively and not apply to cases, which are pending investigation on the date of issuance of the said withdrawal."***

81. Perusal of the above quoted portion of both the orders would clearly reflect that issue of validity of sanction under Section 39 of the Arms Act got messed up with withdrawal of consent under Section 6 of the DSPE Act. Appellant had raised question as to who was the competent authority to grant sanction under Section 39 Arms Act Cr.P.C.; as to whether sanction could have been sought from other authority on the basis of same material

once it was refused by D.C. Kohima; as to whether fresh sanction could have been accorded subsequent to institution of the prosecution on the basis of same material and as to whether grant of subsequent sanction would meet the requirement of Section 39 of Arms Act. Both the Ld. Trial Court and Session Court did not deal with above aspect but went on to discuss that withdrawal of consent under Section 6 of DSPE Act would not forbid the CBI from investigating the offense and from filling report under Section 173 Cr.P.C as the withdrawal of consent would have prospective operation. There is no doubt that withdrawal of consent under Section 6 of the DSPE Act will have prospective operation but appellant here had raised question about the validity of the sanction under Section 39 of Arms Act and not the effect of withdrawal of consent under Section 6 of DSPE Act.

82. Above order dt 30.01.2010 and 26.11.2010 was challenged before the Hon'ble High Court by way of petition bearing Crl. M.C. No. 940/2011 under Section 482 Cr.P.C. and the Hon'ble High court keeping in mind the limited scope of interference under Section 482 Cr.P.C particularly when appellant had already exhausted his right of revision before Session Court, disposed of the petition vide order dt. 01.10.2013 and question of validity of sanction under Section 39 of Arms Act was decided in following words:-

"22. With respect to the contention regarding the improper grant of fresh Sanction by DCP, New Delhi, under Section 39 of the Arms Act in light of the prior refusal by the State of Nagaland to issue a similar Sanction, it is pertinent to revisit the relevant provision.

> *"Section 39. Previous sanction of the district magistrate in certain cases- No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate." (emphasis supplied)*

The above mentioned provision stipulates that a Sanction must be obtained from the District Magistrate prior to the prosecution under the Act. However, the said provision does not suggest that once the Sanction is refused, it could not be sought again from another competent authority. Further, the said provision also does not bar the review/modification of an erstwhile Sanction. The only requirement under Sanction 39 is that a Sanction should be issued by 'District Magistrate' before the institution of prosecution.

23. The Calcutta High court in the case of "**The Superintendent And... v. Mahendra Singh**, **1979 CriLJ 545**, had occasion to interpret the meaning of the term 'prosecution' as used under Section 39 of the Arms Act. The Court held as under

> *"[T]he Supreme Court in the case of **Maqbool Hussain v. State of Bombay** wherein "prosecution" has been defined to mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statue which creates the offence and regulates the procedure. The above decision, in our view, instead of supporting the observation of the learned trial judge goes against the same. We are of the view that the institution of a "prosecution" where a case is started by the Police can be by submission of a report in final form in accordance with Section 173 of the Cr.P.C. 1989 and not before that" (emphasis supplied)*

It is also pertinent to note that under Section 2(d) of the Arms Act, a 'District Magistrate' in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police and includes a Deputy Commissioner, exercising jurisdiction over the whole or any part of such area.

24. With regard to the submission of the petitioner that a review or modification of the Sanction is not allowed, it would be relevant to refer to the case of of **State of Himachal Pradesh v. Nishant Sareen, 2011 [1] JCC 36**. in this case, the Apex Court dealt with the grant of a second sanction given under Section 19 of the Prevention of Corruption Act as well as Section 197 of the Code. The Court observed:

> *"It is true that the Government in the matter of grant or refusal to grant sanction, exercised statutory power, and that would not mean that power once exercised, cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstances whatsoever."*

Since Section 39 of the Arms Act is silent about the power of review or modification of the Sanction, one cannot say that obtaining a second Sanction is barred. All that needs to be considered is whether the requirements under Section 39 of the Arms Act have been complied with. In the instant case, a Sanction was given by the Deputy Commissioner, New Delhi on December 18, 1992 and the chargesheet was subsequently filed on December 23, 1992. Both these documents have been placed on record. Thus, it is clear to me that the proper sanction was obtained by the respondent within the appropriate time and by the competent authority as a part of the offence was said to be committed at Delhi. Therefore, I find no impropriety in the Sanction obtained at New Delhi by the respondent, despite the refusal by the DCP, Kohima, Nagaland."

83. From the above quoted portion of the order of the Hon'ble High Court, it is clear that it held that there is no bar to obtain sanction from another Competent Authority despite prior refusal from a Competent Authority. It further held that DCP, New Delhi was competent authority in asmuch as a part of the offense was said to be committed at Delhi. It also held that since Section 39 of the Arms Act is silent about the power of review or modification of the Sanction, one cannot say that obtaining a

second Sanction is barred. It further held that the only requirement under Sanction 39 is that a Sanction should be issued by 'District Magistrate' before the institution of prosecution and that 'District Magistrate' in relation to any area where Commissioner of Police has been appointed, means Commissioner of Police which also includes Deputy Commissioner of Police. Finally, it also held that the only requirement under Sanction 39 is that the Sanction should be issued by 'District Magistrate' **before the institution of prosecution**. By referring to Sanction dt 18.12.1992 and referring to the date of filling of chargesheet i.e. 23.12.1992, it found that sanction was obtained before the institution of prosecution.

84. Ld. Trial Court in its impugned judgement relying upon all the orders relied herein by the Ld. PP, held that the sanction granted by DCP, New Delhi was legal despite prior refusal by the State of Nagaland and that DCP, New Delhi was the competent authority. Ld. Trial Court also did not find any illegality in obtaining second sanction 21.08.1996 as it held that where for any reason the sanction order was found to be defective, the grant of second order is not prohibited. So far as the contention that entire material was not place before DCP Aditya Arya was concerned, it held that perusal of sanction Ex. PW5/A reflected that the sanction was given after perusing the

papers of this case and merely because first sanction order dt 18.12.1992 was not placed before him would not mean that he did not apply his mind to the documents placed before him and the sanction Ex.PW5/A as granted was without application of mind.

85. In State of ***Himachal Pradesh*** v. ***Nishant Sareen***, **2011 [1] JCC 36** Hon'ble Supreme Court held as under:-

> *"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."* (emphasis supplied)

86. Thus, it can be seen that Hon'ble Supreme Court ruled that in the matter of exercise of statutory power of grant or refusal of

sanction under Section 19 of the Prevention of Corruption Act or 197 of Cr.P.C, Government or Competent authority, as the case may be, can review its own order provided new material is placed before it. It categorically held that on the same material it has no power to review its own decision of granting or refusing sanction. Whether or not fresh material was placed before the Competent Authority after once the power was exercised, is a matter of evidence. Hence, Ld. Trial Court and for that matter this Court can make its own decision on the question of validity of sanction under sanction 39 of the Arms Act based on evidence that came on record during the course of trial. However, this Court will not go into question as to who out of the two was the Competent Authority – D.C, Kohima or DCP, New Delhi as this is not being disputed. What is being disputed is that once sanction was refused by one competent authority, it could not have been sanctioned by another competent authority without there being fresh material on record and secondly any sanction should have been prior to institution of prosecution which in the present case is subsequent to the institution of prosecution as the sanction dt 18.12.1992 was admittedly defective.

87. Ld. PP for CBI Sh. Pramod Singh has submitted that issue of validity of sanction being post institution of the prosecution was not raised before the Ld. Trial Court and therefore the issue of

validity of sanction from the point of previous or post institution of prosecution cannot be raised for the first time before the appellate court. He further submitted that admittedly when the prosecution was instituted it was instituted with previously granted sanction order dt 18.12.1992 and hence institution was not at all bad. Subsequently fresh sanction dt 21.08.1996 was filed and thereafter fresh cognizance was taken on 04.04.1997 in respect of offense under Section 25 of Arms Act. He therefore submit that there is no invalidity to the sanction under Section 39 of Arms Act.

88. On thoughtful consideration of Section 39 of Arms Act this Court find that absence of previous sanction under this Section bars the jurisdiction of the Court and since it relates to the competence/jurisdiction of the court, this issue can be raised at it any stage as parties have no right to confer or take away the jurisdiction upon the Court if it is otherwise vested or not vested by law.

89. Ld. Trial Court obviously did not deal with the question as to whether grant of sanction subsequent to institution of prosecution meet the requirement of previous sanction under Section 39 of the Arms Act. Section 39 of Arms Act lays down that no prosecution in respect of any offense under Section 3 (of the Arms Act) be instituted without the previous sanction of

district magistrate. Thus, previous sanction is a condition precedent for the institution of prosecution in respect of offense under section 3 of the Arms Act punishable under Section 25 of the Arms Act.

90. It has been held in numerous decision by the Hon'ble Supreme Court and High Court that want of sanction takes away the jurisdiction of the court and the defect is not curable. It has been further held that obtaining of sanction is not a mere formality. It has to be proved that it was granted by the competent authority after applying his mind. It should be proved that firearms or the weapon pertaining to which sanction was prayed for was actually taken to the concerned authority and that the said authority after looking at all the relevant papers and applying his mind granted the necessary sanction.

91. In the present case admittedly previous sanction dt. 18.12.1992 granted by DCP Sh. Asad Farooqui was defective as claimed by the prosecution itself. A defective sanction is no sanction in the eye law and it was not only admitted by the CBI/prosecution but was also so held in the order dt 04.04.1997 when it held that cognizance qua the offense under section 25 of the Arms Act on the basis of sanction dt. 18.12.1992 was non-est. Subsequently sanction dt 21.08.1996 Ex PW5/A was filed without any

supplementary chargesheet. Therefore in the present case chargesheet qua offense under Section 3(2) of the Arms Act punishable under Section 25 of the Arms Act was filed on 23.12.1992 that is to say prosecution was instituted on 23.12.1992 but sanction was obtained on 21.08.1996 and filed on 20.12.1996 after about 4 years of the filling of the chargesheet.

92. Sanction dt 21.08.1996, even if valid, cannot relate back to the date of institution dt. 23.12.1992. Hence, there was no compliance of Section 39 of the Arms Act which lays down requirement of previous sanction before institution of prosecution. It has already been noted above that institution of prosecution on the police report means the day when the report under Section 173 Cr.P.C. is filed in the court. Hence, the Court had no competence to take cognizance and try the appellant in respect of offense under Section 25 of the Arms Act without previous sanction. This Court is fully supported in its view by the judgements titled as **Smt. Javitri Devi v. State 1971 Crl.L.J 1340 (V 77 C 384), Om Prakash v. State 1980 RLR 649, Ashish Sinha & Ors v. State of Chhatishgarh 2009 Crl. L.J. 184 and Sukhlal & Anr. v. State of Madhya Pradesh 1998 Crl.L.J. 1366.**

93. Thus, without previous sanction under Section 39 of Arms Act, there cannot be institution of prosecution against appellant in

respect of offense under Section 3 of the Arms Act punishable under Section 25 of the Arms Act and hence Ld. Trial Court had no jurisdiction to take cognizance of the said offence and proceed with the trial and punish the appellant on finding him guilty of violation of Section 3 of the Arms Act punishable under Section 25 of the Arms Act. Entire proceeding in respect of offense under Section 25 of Arms Act was void. Thus this Court, since appellant has been convicted, has no option but to acquit the accused of the charge under Section 25 of the Arms Act,.

94. Further, PW5 Dr. Aditya Arya in his examination in chief did not depose that questioned firearms were taken to him and he had inspected them before according sanction for prosecution under Section 39 of Arms Act. Taking of weapons or firearms (alongwith with ballistic report in the event of doubt as to whether the arms is firearms or not) to the Competent Authority for his inspection along with other materials like FIR, seizure memo, statements of witnesses etc., is an important step to enable proper application of mind.

95. Further, the fact that there was a prior refusal by a Competent Authority is an important factor which should have been brought to the knowledge of the subsequent competent authority approached (particularly when competency of D.C. Kohima also being a Competent Authority is not questioned) so

that the second authority could have applied his mind to see why sanction was not accorded previously and since then what new material has come for reconsideration. Hence, to say that such fact of refusal of sanction or defective grant of previous sanction were not an important factor having bearing on the decision making considerate mind of the Competent Authority, is erroneous. Knowledge of the fact of previous refusal of sanction or grant of defective previous sanction, would have certainly played role in the mind of Competent Authority PW5 as to whether or not to grant the sanction in such background. It cannot be said that despite concealment of the said facts, entire material were placed before the Competent Authority. Hence, since entire materials were not placed before the Competent Authority, it cannot be said that sanction dt 21.08.1996 Ex PW5/A was accorded after application of mind to the entire material. Hence, sanction Ex PW5/A was vitiated by concealment of relevant material and thus invalid.

96. Thus, conviction of the accused under Section 25 of the Arms Act cannot be sustained both for want of previous sanction and for want of valid sanction irrespective of it being post or previous to the institution of prosecution.

97. In the result appeal of the appellant is hereby allowed and conviction of appellant under Section 417 IPC read with Section

420 IPC, Section 471 IPC read with 467 IPC and under Section 25 of the Arms Act and order of sentence dt.02.09.2019, are hereby set aside. The monetary fine as sentenced vide order dt 02.09.2019, if already deposited by the appellant, be returned to him.

98. Other contentions like complaint or RC was not proved or that appellant was made helpless in his defense due to non production of documents or that all three IO's were not examined etc. are not being discussed as above discussed reasons are sufficient to hold that impugned judgement and impugned order of sentences are not sustainable.

99. Bail bond of the accused and surety bond of the surety is hereby canceled. Original document, if any, of the surety be returned to him as per rules.

100. In terms of section 437A Cr.P.C. appellant is hereby required to furnish personal bond in the sum of Rs. 50,000/- with one surety of like amount. Such bond and surety shall remain valid for a period of six months from the date of furnishing.

101. TCR be sent back with copy of this judgment placed on it.

102. Appeal file be consigned to Record Room after necessary compliance.

(Harish Kumar)
Special Judge (PC Act), CBI-20
Rouse Avenue Court, New Delhi
10.07.2020

(Judgment contains 57 pages)