

2025:PHHC:087248



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-867-2008(O&M)

Date of Decision:-17.07.2025

Gurmail Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Arav Gupta, Advocate (Amicus Curiae)
for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General,
Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 08.04.2008 passed by Additional Sessions Judge (Fast Track Court), Bathinda whereby the appeal filed against the judgment of conviction and order of sentence dated 04.08.2007 passed by Sub Divisional Judicial Magistrate, Talwandi Sabo has been dismissed.

2. The FIR in the present case came to be registered on 02.11.2002. The judgment of conviction was passed on 04.08.2007 by the Sub Divisional Judicial Magistrate, Talwandi Sabo. The Appeal filed against the order of conviction was dismissed on 08.04.2008 by the Additional Sessions Judge (Fast Track Court), Bathinda. The instant revision petition was filed on 07.05.2008 and has come up for final hearing now i.e. after a period of more than 22 years from the date of registration of

the FIR.

3. Briefly stated, on 2/11/2002 when the police party consisting of ASI Paramjit Singh, HC Gurmej Singh and others were going towards village Malkana side for checking of suspicious characters and patrol duty, and they reached on a bridge of the minor canal in the area of Village Malkana, a person was seen coming from the front side and on seeing the police party he turned to his left hand side into the fields. On suspicion he was apprehended and interrogated. He disclosed his name as Gurmail singh son of Hakam Singh resident of Jogewala. Upon his personal search a pistol .315 bore was recovered from his left dub of Pajama and from the left pocket of his shirt a live cartridge 315 bore was recovered. The measurement of pistol was recorded and the site plan was prepared. A Ruqa was sent for registration of the case and all the articles were taken into possession. After completion of investigation the challan was presented against the accused U/s 25/54/59 of Arms Act.

4. Finding a prima facie case, charge U/s 25 of Arms Act was framed, to which the accused pleaded not guilty and claimed trial.

5. In evidence the prosecution examined PW-1 HC Gurmej Singh recovery witness. He supported the version of the prosecution and proved on record sketch of pistol Ex. PA, recovery memo Ex. PB, personal search memo Ex. PC and arrest memo Ex.PD.

6. PW-2 PHJ Rajinder Singh, Armourer also supported the version of prosecution and proved on record his test report Ex.PE.

7. PW-3 Fauji Ram MHC with whom the case property was deposited tendered his affidavit Ex.PX and supported the version of prosecution.

8. PW-4 Ajit Singh, Ahlmad of the office of District Magistrate,

Bathinda proved on record sanction Ex.PW4/A.

9. PW-5 ASI Hardev Singh, fully supported the version of prosecution and proved on record pistol Ex.P-1 and live cartridge Ex.P-2.

10. PW-6 ASI Paramjit Singh, IO fully supported the version of prosecution and proved on record sketch of pistol Ex.PA, recovery memo Ex. PB, personal search memo of accused Ex. PC, arrest memo Ex. PD, ruqa Ex.PW6/A, FIR Ex.PW6A-1, site plan Ex. PW6/B, case property Ex. P-1 and Ex. P-2.

11. Statement of accused was recorded U/s 313 Cr.P.C. wherein he denied all the allegations and stated that he had been falsely implicated.

12. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the court of Sub Divisional Judicial Magistrate, Talwandi Sabo vide judgment and order of sentence dated 04.08.2007 as under:-

Offence under Section	Sentence	Fine	RI/SI in default of payment of fine
Section 25 of Arms Act	RI for 01 Year	Rs.1000/-	RI for 02 Months

13. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge (Fast Track Court), Bathinda, vide judgment dated 08.04.2008.

14. The aforementioned judgments are under challenge in the present revision petition.

15. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 15.07.2008.

16. The learned Amicus Curiae for the accused/petitioner contends that there is a delay in sending the weapon to the armourer for his opinion as

to whether it was in working condition. The recovery of .315 bore pistol and a live cartridge was effected on 02.11.2002, the date of registration of the FIR but the same was sent to the armourer only on 15.01.2003 on which date the armourer vide his report Ex.PE had opined that the pistol was in working condition. This delay is fatal to the prosecution case more so when the recovered cartridge had not been sent to the said armourer. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Kartar Singh Vs. State of Punjab 1993 CrL. L.J.183.***

He further contends that though the checking report Ex.PE of armourer Rajinder Singh PW-2 is to the effect that the weapon was in working condition, the report is silent as to how the armourer had come to that conclusion without even referring to the presence of a firing pin in the weapon. Reliance is placed on the judgment of this Court in ***Jagtar Singh Vs. State of Punjab CRR-861-2008(O&M) Decided on 17.03.2025.***

He thus contends that the present revision petition be accepted and the petitioner be acquitted of the charges framed against him.

17. The Counsel for the State on the other hand contends that the offence stands established beyond reasonable doubt. The accused/petitioner was found in possession of .315 bore pistol along with a cartridge. As per the armourer the said weapon was in working condition. The delay, if any in sending the weapon to the armourer is not fatal to the prosecution case. Therefore, the petition is liable to be dismissed.

18. I have heard counsel for the parties.

19. In ***Kartar Singh's case (supra)*** the Hon'ble Supreme Court has held as under:-

“6. We will now proceed to consider the correctness of the above submissions. We have ourselves carefully examined the evidence. PW2 is the

armourer. He does not say that the cartridges were ever sent to him for test. He merely states that only pistol of 9 m.m. bore was produced which was tested by him to find out whether it was in working condition. It is somewhat surprising that in a matter like this when 60 cartridges had been seized not even one had been sent to PW2 armourer. This is apart-from the delay in sending the pistol itself. The recovery as stated by the prosecution was on 27-1-89 while pistol was sent for mechanical test only on 8-4-89. As to what exactly was the cause for delay, we are left in the realm of guess. Be that as it may, on the question whether the recovered arm together with cartridges were kept in parcels or not, there are contrary statements between ASI and the Head Constable, while former would state that they were not kept under seals, the later would depose that they were kept in sealed parcels. This casts a serious doubt about the version of the prosecution.

8. *Having regard to the above material contradictions seen in the light of the delay in sending the arm for mechanical test coupled with failure to send the cartridges to PW-2 armourer we are disinclined to accept the version of the prosecution. We cannot merely rest our conclusion on the statement suffered by the accused during investigation as is one by the learned judge of the designated court. Under these circumstances, we are obliged to reject the case of the prosecution which means the appellant is entitled to acquittal. Accordingly, we set aside the conviction and sentence of the appellant and allow the appeal. He shall be set at liberty forthwith.”*

20. In the instant case, the weapon was recovered on 02.11.2002 and it was sent for examination to the armourer only on 15.01.2003. There is no plausible explanation that has been furnished for this delay in sending the weapon. Further, the recovered cartridge had not been sent for analysis. Therefore, the prosecution case becomes doubtful.

21. In *Jagtar Singh's case (supra)* this court has held as under:-

“14. *As regards the argument that since the weapon had not been test fired it could not be said to be in working condition, it has been held in Jarnail Singh Vs. State of Punjab 1999(1) RCR (Criminal) 166, Harnek Singh Vs. State of Punjab 1999(1) RCR (Criminal) 171 & Mohan Vs. State of Madhya Pradesh Criminal Revision No.3172 of*

2019 Decided on 29.08.2019 that test firing is not required where the weapon has been examined and found to be in working condition.

15. As regards the argument that since the firing pin had not been seen the weapon could not to be said to be a firearm in working condition it would be useful to examine the deposition of PW-5 Gurnam Singh, HC is reproduced herein below:-

“ State versus Jagtar Singh

PW-5 Statement made by Gurnam Singh HC No. 411/FDK, Police Lines, Faridkot on SA.

On 17.02.2003, I was present at Police Station Sadar Faridkot. At that time, HC Pirthipal Singh produced a parcel duly sealed before me to check after taking out the same from the malkhana. I broke the seal RS and checked a country made 315 bore double barrel pistol with my gauge. Trigger action was checked and it was in working condition. It was used without cartridges and it was found in working condition. After checking, I sealed the said parcel with my seal bearing GS and produced case property and Test Report before HC Pirthi Pal. My Test Report Is. Ex-PW5/A. My statement was recorded.

XXXXXXXXXX

Today, I have not seen case property. I did not see the mark ---- (some text illegible) on the sections of finger. We don't possess any instrument to check cartridge. The barrel was smooth. Neither I checked firing pin nor mentioned anything in that regard. There were two triggers. I did not mention in my report that both the triggers were checked. The trigger was without guard. The barrel was clean. This barrel was not taken to use earlier. It is wrong to suggest that I am deposing falsely.

RO& AC
Sd/- Gurnam Singh

Sd/-
CJM/12.04.06”

16. How a firearm propels a projectile has been explained in Modi's Medical Jurisprudence and Toxicology 25th Edition at Page 621 and reads as under:-

Firearms.-Firearm is any instrument/device, which propels a projectile(s) by the expansion of gases generated by the combustion of an explosive substance, Ballistics is the study of physical forces reacting on projectile(s) and missile(s) and their motion.

Every shotgun has a barrel, which is a long, hollow cylinder of steel. The lumen of the barrel is termed the "bore", the rear end in which the cartridge is inserted is called the breech and the front end the 'muzzle'.

*The shotguns are called breechloaders and muzzleloaders accordingly on the ammunition, Missiles/projectiles are loaded at the breech end into a chamber and they are forcibly driven forwards along the barrel by the detonation of an explosive charge, which forms gases at a high temperature and great pressure in the chamber at the closed end of the barrel. The projectile reaches its maximum velocity as it comes out at the open end of the barrel and this is called 'muzzle velocity'. **By pulling a trigger, which releases a hammer or pin and strikes over the percussion cap at the base of the cartridge the primer contained in percussion cap is detonated and it fires the propellant charge.** A service rifle needs around five pounds of pressure on the trigger to release the hammer while a revolver needs three to five pounds for single action and around 15 pounds for double action. The breech pressure in a rifle is about 20 tons while in a revolver it is only about six tons per square inch. There are also semi-automatic/automatic weapons, where the firing mechanism is automatic and in some, even the loading of cartridges is automatic from containers called magazines. During the free flight of the missile its shape, weight, muzzle velocity and the medium through which it passes are the factors that determine its range and energy with which it strikes the target.”*

17. *Apparently, when the trigger is pulled, it releases a hammer or a pin which then strikes the percussion cap at the base of the cartridge which propels (fires) the same. Thus in the absence of checking for a firing pin it cannot be ascertained that a shot could be fired and therefore, the weapon cannot be stated to be a firearm in working condition.*

18. *In view of the aforementioned discussion, once PW-5 Gurnam Singh, HC in his report Ex.PW-5/A has only referred to the examination of the trigger and in his cross examination has categorically stated that he had not checked the firing pin nor mentioned anything in that regard in his report, it cannot be said that the weapon allegedly recovered was*

a firearm in a working condition designed to discharge a projectile.”

22. The checking report Ex.PE of PW-2 Rajinder Singh, Armourer does not show as to how he had come to the conclusion that the said weapon was in working condition. While test firing of weapon may not be mandatory to come to the conclusion that a weapon is in working condition, the report must reveal the basis, on which, the armourer has come to a conclusion of a weapon being in working condition. In the instant case, there is not even a mention that the weapon had a firing pin which is essential to establish that the weapon was in working condition.

23. The upshot of the aforementioned discussion is that the prosecution has not been able to prove its case beyond reasonable doubt. Resultantly the present petition is allowed and the impugned judgment dated 04.08.2007 passed by Sub Divisional Judicial Magistrate, Talwandi Sabo as well as judgment dated 08.04.2008 passed by Additional Sessions Judge (Fast Track Court), Bathinda dismissing the appeal preferred by the petitioner/accused are set aside. The accused/petitioner is acquitted of the charges framed against him.

**(JASJIT SINGH BEDI)
JUDGE**

July 17, 2025

Vinay

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No