

PETITIONER:
JASPAL SING

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 24/09/1998

BENCH:
G.T.NANAVATI, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

Hon'ble Mr. Justice G.T.Nanavati
Hon'ble Mr. Justice S.P.Kurdukar
Ujjagar Singh, Sr.Adv., G.C.Sharma, Ms.Naresh Bakshi, Advs,
with him for the appellant
R.S.Sodhi, Kuldip Singh and Rupesh Kumar, Advs. for the
Respondent

The following Judgment of the Court was delivered:
Nanavati. J.

The appellant has been convicted under Section 25 of the Arms Act and Section 5 of the TADA Act as he was found in possession of one DBBL gun. 12 bore and five live cartridges on 17/18.3.1992. The trial court relying upon the evidence of ASI - Balbir Singh and P.W.4 - Man Singh who were the members of the Police party held that it was proved by the prosecution that the appellant was in possession of those articles. The trial court further held that as the gun was found loaded, it can be presumed that it was in working order. Taking this view it convicted the appellant, as stated above.

Admittedly, no evidence was led by the prosecution to prove that the gun was in working condition and that the cartridges which were found from the person of the appellant were live cartridges. Neither ASI - Balbir Singh had stated so nor any report from an expert was obtained to establish that the gun was in working condition and that five cartridges were live. What was found in the gun were two empties and not live cartridges and, therefore, it was not proper to presume that it was in working condition. In absence of any evidence to that effect, the conviction of the appellant under both these aforesaid Sections cannot be upheld. We, therefore, allow this appeal, set aside the judgment and order passed by the Additional Judge, Designated Court, Sangrur, in Special Sessions Case No. 55/92 and acquit the appellant. He is ordered to be released forthwith if his presence is not required in jail in connection with some other case.