

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Court No. - 9

Case :- CRIMINAL APPEAL No. - 1251 of 2023

Appellant :- Awadhesh Mishra

Respondent :- State Of U.P. Thru. Prin. Secretary
Home, Lucknow

Counsel for Appellant :- Apoorva Tewari

Counsel for Respondent :- G.A.,B/S0877

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Apoorva Tewari, learned counsel for the appellant, Sri Umesh Chandra Verma, learned A.G.A. for the State and perused the material available on record.

2. This is an appeal under Section 454 of the Code of Criminal Procedure¹ by the appellant, **Awadhesh Mishra**, who is a witness in Sessions Trial No.1169 of 2014.

3. The facts of the case in brief are that the appellant claims to be a bonafide purchaser of a pistol bearing No.053775 CZ from Guru Ram Das Armoury, Kanpur through its proprietor, Amit Pal Singh. It is said

¹ (hereinafter referred to as "Cr.P.C.")

that during the course of investigation of an F.I.R., the appellant was asked to deposit the said pistol as there were allegations of changing the make of the firearms imported from outside and then selling them as also forgery in the record of the gun houses. Amit Pal Singh was also an accused. The investigation revealed that the pistol-in-question was initially with National Gun House and as per its repair register, at page No.26 dated 08.06.2012, there was an entry of NP 32 bore pistol No.143032 in the name of licensee, Mohd. Sajid bearing license No.2635208, for the purposes of repairing. As per the entries in the said register at Page No.28 dated 05.07.2012, the said Mohd. Sajid, who was shown as having been given pistol No.053775 CZ after repairing. Again as per T.L. No.1 of the stock register of National Gun House dated 16.10.2012, this pistol bearing No.053775 CZ was shown as having been sold to Guru Ram Das Armoury, Kanpur and on the same day, Guru Ram Das Armoury has shown receipt of the pistol at Page No.41 of its stock register. On 19.10.2012, as per the sale register of Guru Ram Das Armoury, Kanpur at Page No.19, the aforesaid pistol was sold to the licensee, Awadhesh Mishra, who is the appellant before us. The weapon is said to be fabricated. The trial was held against the accused including Amit Pal Singh. As already stated hereinabove, the appellant herein was a witness and his weapon, which is exhibited as material Ext. No.75, was deposited in the said trial. During pendency of the trial, the appellant filed an application under Section

451 Cr.P.C. for releasing of the weapon in his favour, which was rejected on 25.07.2013. The said order was not challenged by the appellant. Ultimately, the trial was concluded on 12.11.2019 and according to the appellant, Amit Pal Singh was acquitted of the offences alleged under Sections 121A, 122 of the Indian Penal Code² and Sections 3, 5, 25, 30, 35 of Arms Act, 1959³. However, he was convicted of the offences under Sections 420, 467, 468, 471, 120B and 109 I.P.C. After conclusion of the trial, the appellant again applied for release of his weapon by way of an application filed under Section 452 Cr.P.C. The said application has been rejected by the learned trial court only on the ground that while deciding Sessions Trial No.1169 of 2014, it had been observed in the judgment dated 12.11.2019 that the recovered items could be disposed of after expiry of limitation for filing the appeal against the said judgment or as per the orders of the learned appellate court, in accordance with Rules. Therefore, in view of this observation in the final judgment, it was not open to it to release the weapon as appeals had already been filed against the said judgment by the accused. In these circumstances, the order dated 12.04.2022 rejecting the application of the appellant under Section 452 Cr.P.C. has been filed.

4. The contention of the appellant's counsel is that no doubt the pistol purchased by the appellant is a material exhibit in respect to Sessions Trial No.1169 of

² hereinafter referred to as "I.P.C."

³ hereinafter referred to as 'Act, 1959'

2014, against which, Criminal Appeals No.430 of 2020, 2379 of 2019, 2382 of 2019, 2392 of 2019, 2440 of 2019, 2474 of 2019, 2516 of 2019, 2517 of 2019, 252 of 2020, 396 of 2020 and 435 of 2020 are pending before this Court, but, the fact of the matter is that the appellant was only a witness in the trial and he is not an accused. The trial has already concluded, though appeals are pending.

5. His further submission is that there is no impediment in releasing the weapon in favour of the appellant and he is ready to give an undertaking or the Court may impose a condition that he would not make any changes to the weapon during pendency of these appeals nor sell or alienate the same in any manner.

6. Learned counsel for the appellant has placed before us a judgment of Hon'ble the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat**⁴. Relevant extracts of which are being quoted herein below:-

"12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such

⁴ (2002) 10 SCC 283

articles would be produced if required at the time of trial; and

(3) after taking proper security.

13. *For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition."*

7. Learned counsel for the appellant says that the aforesaid decision pertained to release of property under Section 451 Cr.P.C.

8. Sri Umesh Chandra Verma, learned A.G.A. has opposed the appeal on the ground that the weapon is a material exhibit and merely because Amit Pal Singh has been acquitted of the offences with which, he was charged under the Act, 1959, does not make much of a difference as he has been convicted of the offence under Sections 420, 467, 468, 471, 120B and 109 I.P.C. He also says that the weapon may be required during the appellate proceedings, if the court so desires. Therefore, this aspect may be kept in mind.

9. Having considered the matter from all respective angles and having heard learned counsel for the parties after taking into consideration the judgment

referred hereinabove, we are of the opinion that the appellant is a witness in the trial and not an accused, secondly, on being asked, learned A.G.A., Sri Umesh Chandra Verma fairly submitted that there is no such order under any provision of law requiring the weapon to be confiscated for any reason and as the trial court has rejected the application of the appellant under Section 452 Cr.P.C. only for the reason that in the final judgment dated 12.11.2019 rendered in Sessions Trial No.1169 of 2014, it had already mentioned that the recovered items would be disposed of in terms thereof and as appeals had been filed, therefore, it was handicapped and did not have jurisdiction to consider the application, we are of the opinion that there is no impediment in releasing the weapon in favour of the appellant. There is no order on record for confiscation of the pistol-in-question under any law/ statute. No other reason has been putforth by learned A.G.A. for not releasing the weapon except that it being a material exhibit, may be required to be seen by the court in appellate proceedings, which are pending before this Court. The appeals may take time to be decided. Trial has already concluded, subject to result of appeals we see no reason to decline release of the weapon to the appellant subject to certain conditions.

10. The weapon shall be released in favour of the appellant subject to the following conditions:-

(i) Proper *panchnama* of the weapon bearing pistol No.053775 CZ shall be prepared before its release.

(ii) Coloured photographs of the weapon shall be taken from all possible angles.

(iii) The appellant shall not make any changes to the weapon including any part/ component of the weapon i.e. pistol bearing No.053775 CZ nor sell or alienate it in any manner without the permission of this Court by filing an application in the pending appeals of the accused.

(iv) A bond shall be submitted by the appellant that the weapon shall be produced at any time during the hearing of the appeals, if so required by the Court.

(v) The appellant shall furnish proper security in the form of two sureties of the like amount to the satisfaction of the court concerned, to secure the aforesaid release and production, if required.

(vi) The coloured photographs of the weapon would be attested and countersigned by the appellant herein.

(vii) Photocopy of the documents prepared in this regard shall be sent to this Court by the learned trial court for being kept on the records of the pending appeals.

11. In view of the above, the present criminal appeal is **allowed**. Consequently, the order dated 12.04.2022 passed by the learned Additional District & Sessions Judge, Court No.4/ Special Judge, E.C. Act, Lucknow in Criminal Misc. Case No.8 of 2022 titled as Awdhesh Mishra vs. State of U.P. is hereby set aside.

12. A copy of this order shall be kept on the records each of the pending connected appeals.

(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)

Order Date :- 19.10.2023
cks/-