

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-No.10940 of 2015
Date of decision: August 19, 2015

Subhash

-----Petitioner (s)

V/s

State of Haryana

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sudhir Kumar Hooda, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.(Oral)

The petitioner, namely, Subhash son of Nar Singh has filed the present petition under Section 482 Cr.P.C. read with Section 452 Cr.P.C. for quashing of order dated 09.02.2015(Annexure P-4), whereby the learned Addl. Sessions Judge, Gurgaon, has dismissed the application filed by the petitioner for the release of Arm Licence No.657XP and .32 Kanpur made Revolver weapon. It is the case of the petitioner that FIR No. 165, dated 26.07.2010, under Sections 307, 332, 186, 353 read with Section 120-B IPC and Section 13/A/3/67 of the Gambling Act 1967, Police Station Sector-40, Gurgaon, was registered against him and other co-accused. The case was tried by Id. Addl. Sessions Judge and the trial Court vide judgment dated 20.10.2014 had acquitted the accused and has observed as under:-

“As a sequel to above mentioned findings, the accused are acquitted of the charges levelled against them for the commission of offences punishable under Sections 120-B, 186, 332, 353, 307 IPC and 13-A of Gambling Act, 1967 and accused Satvir, Amit, Shyam and Devender are also acquitted for the charge for the commission of offence punishable under Section 25 of the Arms Act. Accused Shyam, who is in custody, be set at liberty forthwith provided he is not required in any other case. Bail bonds and surety bonds of other 11 accused persons named above stand discharged accordingly. The case property, if any, be dealt with as per rules, after the expiry of period of appeal or revision, as the case may be. File be consigned to record room after due compliance.”

Announced in open court.

Sd/-

Dated 20.10.2014.

(Phalit Sharma)

(Additional Sessions Judge)”

Having been acquitted by the trial Court and for the reason that the arms licence and the weapon-in-question were ordered to be kept in the custody of police, the petitioner moved an application filed under Section 482 Cr.P.C. for the release of the arms licence and the weapon-in-question. The reply was filed by the police admitting the fact that no doubt, the petitioner has been acquitted by the trial Court but the petitioner had fired a shot on the police party at the time of his arrest and, therefore, weapon-in-question could not be released to the petitioner, as he is likely to commit the same offence again.

Considering the aforesaid reply, the learned Addl. Sessions Judge, Gurgaon, vide order dated 09.02.2015 declined the prayer of the petitioner for the release of the arms licence and the weapon-in-

question. Presumably on the premises that an appeal against the order of acquittal has been recommended and it would not be advisable to release the weapon, which is otherwise in the safe custody of the police.

Learned counsel for the petitioner contends that apart from the fact that there is no other case registered against the petitioner and the petitioner does not possess any criminal background, he had also been acquitted by the trial Court, vide judgment dated 20.10.2014. Therefore, he is legally entitled to get the arms licence as well as weapon released.

Mere plea of the respondent is that against the order of acquittal, appeal has been recommended is not sustainable particularly when no material has been placed on record to substantiate the aforesaid assertion. He also submits on acquittal, it is the legitimate right of the petitioner to get back his licence and weapon, as the petitioner was falsely implicated in the case which ultimately led to his acquittal.

Learned State counsel with the assistance of ASI-Bed Singh, submits that since the petitioner had fired a shot on the police party at the time of his arrest, there is some possibility to commit such like incident again and it would not be desirable to release his arms licence and the weapon-in-question.

However, on the point of filing of an appeal against the order of acquittal, learned State counsel has fairly conceded that, as per his information, no such appeal has been filed till date. Learned State counsel has also argued that there is such provision under Section 452 Cr.P.C., the present petition in the present forum is not maintainable.

Section 452 provides the remedy against aggrieved person in such like circumstances.

I have heard learned counsel for the parties and perused the record of the case.

The impugned order dated 09.02.2015 passed by learned Addl. Sessions Judge, Gurgaon, nowhere refers to the aforesaid contention of the learned State counsel that the petitioner may cause threat to the police or he may misuse the weapon-in-question in case it is released. The only ground of rejection of the said application is that against the order of acquittal appeal has been recommended, no such material has been placed before this Court to substantiate the fact that the prosecution has filed an appeal or is in process of filing such appeal. As regards the plea of the learned State counsel that the remedy of appeal, as provided under Section 452 Cr.P.C. is made available to the petitioner and the present petition is not maintainable, this Court finds that the present petition against the order of acquittal lies in this Court. The petitioner has filed the present petition with the aid of Section 452 Cr.P.C.

Since the prosecution has not filed any appeal against the order of acquittal and no material has been placed before this Court to substantiate the fact that the prosecution has filed an appeal or is in process of filing such appeal, I find that order dated 09.02.2015 passed by learned Addl. Sessions Judge, Gurgaon, does not sustain to the scrutiny of law.

Accordingly, the present petition is allowed and the order dated 09.02.2015 passed by learned Addl. Sessions Judge, Gurgaon, is set aside.

In view of the above, Chief Judicial Magistrate, Gurgaon, is directed to pass an order for the release of Arm Licence No.657XP and the weapon-in-question forthwith, as provided under Section 452 (3) Cr.P.C.

However, Chief Judicial Magistrate, Gurgaon, is at liberty to impose such reasonable condition, as may be warranted by law, according to the facts and circumstances of the present case.

August 19, 2015
Anjal

(HARI PAL VERMA)
JUDGE