

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

Crl. Misc. No.M-8057 of 2015

Date of Decision: 12.10.2015

Mohinder Singh alias Kaku

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. A.P.S. Randhawa, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 20.04.2013 passed by the Additional Sessions Judge, Mansa, whereby, the application filed by the petitioner for release of original Arm Licence of .32 bore pistol bearing Sr. No.56/DM, which was taken into possession in case FIR No.74 dated 10.11.1996 registered under Sections 302/307/34 IPC at Police Station Boha, District Mansa, has been rejected.

Notice of motion was issued only on the contention that the licence has not been confiscated to the State and as such, the grouse of the petitioner was limited to the extent that as the licence of the petitioner

was not confiscated to the State, the same be released to him.

Petitioner faced trial in said FIR and he was convicted and sentenced to undergo rigorous imprisonment for life for commission of offence under Section 302 IPC and other sections vide judgment dated 09.12.1999. However, the said judgment of conviction and order of sentence passed by the trial Court was challenged before this Court and vide judgment dated 18.02.2009, the conviction of the petitioner was converted from Section 302 IPC to Section 304 Part-II IPC and he was sentenced to undergo rigorous imprisonment for ten years.

After undergoing the entire sentence awarded to the petitioner, he moved an application before the concerned police for release of original Arm Licence of his .32 pistol bearing Sr. No.56/DM along with other articles from the police custody as the same were lying in police malkhana at Police Station Boha. Thereafter, the petitioner moved an application before the Additional Sessions Judge, Mansa for issuance of direction to the MHC Police Station Boha, District Mansa to return original Arm Licence of .32 bore pistol but the same was dismissed vide order dated 20.04.2013, which is subject matter of challenge before this Court.

Learned counsel for the petitioner submits that the application moved by the petitioner has been dismissed only on the ground that the application filed by him for release of his .32 bore pistol has been rejected, therefore, his licence cannot be released. Learned counsel also submits that the order passed by the Additional Sessions Judge, Mansa is liable to be quashed as not only the said order is non-speaking but even no justification, whatsoever, has been given.

Learned counsel for the respondent-State submits that the application moved by the petitioner has rightly been dismissed as his conviction and sentence has been upheld by Hon'ble the Apex Court. He

further submits that the licence of .32 bore weapon used in the offence, cannot be renewed as no such order has been passed by the Court.

Heard the arguments of learned counsel for the parties and have also perused other documents available on the file.

Admittedly, the petitioner was convicted for offence punishable under Section 302 IPC by the trial Court and was sentenced to undergo life imprisonment but his sentence was converted from Section 302 IPC to Section 304 Part-II IPC by this Court and he was sentenced to undergo rigorous imprisonment for 10 years. However, the appeal filed against the judgment of this Court was also dismissed and as such, the judgment of conviction and order of sentence passed by this Court was upheld by Hon'ble the Apex Court. It is also not disputed that .32 bore pistol bearing Sr. No.56/DM was taken into custody by the police being the case property and the application moved by the petitioner for releasing the same has already been dismissed.

Chapter XXXIV of Cr.P.C deals with disposal of property. Section 451 of Cr.P.C deals with order for custody and disposal of property pending trial in certain cases and Section 452 of the Code talks about order for disposal of property at conclusion of trial. The said section is reproduced as under :-

“452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court,

engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term" property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

A perusal of said section shows that it is the duty of the Court to pass order for disposal, destruction, confiscation or delivery of any property to any person claiming to be entitled to possession thereof.

As per provisions of Section 452(2) of the Code, an order is also to be passed for the delivery of any property to any person claiming to be entitled for the possession thereof.

As per provisions of Section 452(3) of the Code, the Court of Session may issue a direction to the Chief Judicial Magistrate for dealing with the matter as provided under Sections 457, 458 and 459 of the Code.

While rejecting the application of the petitioner, virtually no reasoning, whatsoever, has been given. Simply, it has been mentioned that the application for releasing of .32 bore pistol has already been rejected, whereas, the request of the petitioner in the application was for release of original licence of .32 bore pistol.

On perusal of impugned order dated 20.04.2013 passed by the Additional Sessions Judge, Mansa, it appears that neither any provision has been relied upon nor any finding has been recorded and the

application has simply been dismissed, whereas, it was the duty of the trial Court to decide the application as per provisions of Sections 457, 458 and 459 of the Code.

Accordingly, this petition is allowed and the impugned order dated 20.04.2013 passed by the Additional Sessions Judge, Mansa is set aside with a direction to decide the application of the petitioner afresh in view of provisions of Sections 457, 458 and 459.

However, in case, the petitioner is entitled to the release of his licence, then the same be released to him forthwith within a period of two weeks and in case, any adverse order is passed, the petitioner is at liberty to challenge the same.

The petition is disposed of accordingly.

12.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE