

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

CRA-S No.2981-SB of 2015

Date of decision: 17th February, 2016

Mahender Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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| 1. Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes |
| 2. Whether to be referred to the Reporters or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sandeep Goyat, Advocate
for the appellant.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana.

FATEH DEEP SINGH, J.

The sole point that has been raised in this appeal preferred under Section 454 Cr.P.C. is the very order of confiscation of a licensed gun of the appellant wherein exercising the powers under Section 452 Cr.P.C. at the time of passing of the final judgment dated 07.10.2014, the Court of learned Sessions Judge, Hisar ordered it to be confiscated to the State. Thus, it is the claim of the owner/appellant over this gun and the orders of confiscation which are germane to these proceedings.

The concise facts are that a case by way of FIR No.708 dated 15.07.2013 under Section 307 IPC read with Section 27 of the

Arms Act was registered at Police Station Sadar Hisar (Haryana) against the accused/appellant Mahender Singh. The same was on the allegations of complainant Vinod Kumar that on 14.07.2013 while he was in his fields, the accused who is his real brother, fired at him in order to kill him and the fire hit the right side of his abdomen. At the trial, the prosecution witnesses did not support the prosecution story and as a consequence of which the accused stood acquitted. However, the trial Court in the said judgment passed the following directions:

“... .. Case property, if any be confiscated to the State after the expiry of the period of appeal. Case file be consigned to record room.”

Thus, aggrieved over the denial of his weapon to him, the appellant has invoked jurisdiction of this Court.

Heard.

Appreciating the arguments of the two sides, the very provisions of Section 452 Cr.P.C. shows that it refers to property or documents which are produced before the Court, which are in the custody of the Court, regarding which an offence appears to have been committed or which has been used for the commission of an offence. Holding out further that at the conclusion of such an inquiry or trial, the disposal of such a property can be made either by destruction, confiscation or delivery to any person entitled to the possession thereof. It is admitted stand of the State and so is

prosecution allegation in the criminal case that the gun in question is the licensed weapon of the accused and with which he is alleged to have fired at his brother, the complainant in that case. Thus, from the plain reading of the wording of Section 452 Cr.P.C. it shows that the Court has sole discretion to dispose off the property in any manner either by destruction, confiscation or delivery to the person claiming it so. But such discretion ought to be a judicial function and not depending on the whims and caprice of the Court, and therefore, the arbitrariness needs to be ruled out. The weapon in question belongs and is alleged to have been recovered from the possession of the present appellant, the accused in the main case, and over which there is no other better claimant to lay claim.

Exploring the very judgment impugned before this Court, learned Sessions Judge did not give any reasoning whatsoever for directing confiscation of this licensed gun, admittedly belonging to the accused/appellant, nor the learned State counsel could bring to the notice of this Court as to the very special circumstances which would warrant a departure and to hold that the same needs to be confiscated to the State. Apparently, neither before passing the orders of confiscation any show cause notice was issued nor any opportunity of hearing was given to the appellant as to why his weapon be not confiscated to the State, which is in contravention to the golden rule of *audi alteram partem*.

It is not the stand of the State that the accused even on earlier occasions had misused the weapon in question or by its

possession would be a source of threat or annoyance/injury to the people at large. Therefore, the impugned findings are totally non-speaking, nor spells-out what has necessitated confiscation of this case property. Being the rightful owner, who is a valid license holder, nothing can stop the appellant from getting the weapon back to him. Thus, to the mind of this Court, for which this Court seeks support from the Hon'ble Apex Court view laid down in '**N.Madhavan v. State of Kerala**' 1979(4) SCC 1, and in the light of these contentions and the position of law as enunciated above, the impugned judgment to this effect is set aside and the weapon is ordered to be returned to its rightful owner on due verification by the trial Court as per the procedure laid down.

The appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 17, 2016

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