IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal S-1699-SB of 2012
Date of Decision: April 6, 2017

Ravinder Pal Singh .....Appellant

Versus

State of U.T., Chandigarh ..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

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Present : Ms. Sumanjit Kaur, Advocate
for the appellant.

Dr. Sukant Gupta, Addl. Public Prosecutor
for U.T. Chandigarh.

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T.P.S.MANN, J. (Oral)

Complainant-Ravinder Pal Singh has filed the present appeal under Section 454 Cr.P.C. for challenging of the judgment dated 4.3.2009 passed by learned Additional Sessions Judge, Chandigarh.

Vide impugned judgment, the trial Court acquitted the accused of the charges against them. The case property was ordered to be confiscated after the expiry of the period of revision or appeal, as per rules. The appellant is aggrieved of the impugned judgment to the extent of confiscating the case property, i.e. his licenced .22 bore pistol bearing No. 34085.

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An FIR No. 249 dated 29.10.2005 was registered at Police Station Sector 3, Chandigarh under Sections 307/34 IPC and Sections 25/27 of the Arms Act was registered on the basis of written complaint submitted by the complainant to the effect that he was executive member of Chandigarh Club and on 29.10.2005, he alongwith his friends went to the club and was sitting in the card room where one waiter came to him and told him that some miscreants, who were not the members of the club were present in the card room and abusing the members besides threatening them. The complainant went there and found four persons, who were not members of the club sitting on a table and making the nuisance. On the objection of the complainant, they started beating him. One of them even fired at the complainant and threatened that he would kill him and his friends. Other members of the club and one of the guests of the complainant tried to stop them but two of those persons ran away while the other two were apprehended. Both the accused threatened the complainant even in the presence of the police.

During the investigation of the case, one pistol of .22 bore bearing No. 34085 belonging to the complainant was taken into possession. Upon completion of the investigation, the accused were tried for committing offences under Sections 307/34 IPC and Sections 25 and 27 of the Arms Act. At the trial,

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the prosecution examined complainant Ravinder Pal Singh as PW1, Anurag Sahni as PW2 and Rajiv Luthra as PW3. All of them, however, resiled from their statements made before the police. The learned Public Prosecutor also gave up Baljinder Singh @ Talla and Gurswaraj Singh @ Dhami having been won over by the accused. The Public Prosecutor then made a statement that there was no other eye witness to the occurrence and since the star witnesses of the prosecution had not supported the prosecution case and no useful purpose would be served by examining the other witnesses, who were formal in nature, he closed the prosecution evidence. Further, as nothing incriminating had come in the statements of PW1 to PW3, which could be put to the accused during their cross-examination under Section 313 Cr.P.C., even recording of their statements was dispensed with.

After hearing learned counsel for the parties and on finding that all the material prosecution witnesses had totally disowned the prosecution case on all material points and specifically deposed that they had not seen the accused at the spot on the date of the occurrence, the trial Court was left with no other option but to acquit the accused of the charges against them. Accordingly, their bail bonds were discharged. The case property was, however, ordered to be confiscated after the expiry of period of revision or appeal, as per rules.

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According to the appellant, his .22 bore pistol bearing No. 34085, which was made in Spain was taken into possession by the police during the investigation of the case vide memo Ex.PH. However, as the said weapon had not been used by him during the alleged incident, the same ought to have been ordered to be released in his favour instead of being confiscated.

Learned counsel representing the U.T. of Chandigarh could not dispute the aforementioned facts especially in view of the fact that the local police had already given 'no objection' in the case the aforementioned weapon was released on superdari to its original owner, i.e. the complainant. Copy of the police report stands appended with the appeal as Annexure A-2.

Once the weapon in question, which was the licenced weapon of the complainant was not used by the complainant in any manner, the same ought not to have been even recovered by the Investigating Agency during the investigation of the case. Anyhow, as the weapon was taken into possession on the conclusion of the trial, it ought to have been released in his favour as it was not used as a weapon of offence, rather it was simply being carried by the appellant and he possessed a valid licence to carry the same. Under these circumstances, the trial Court ought not to have been ordered for confiscation of the case property, i.e. .22 bore pistol bearing No. 34085, rather it ought to

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have been released in favour of the appellant on the conclusion of the trial.

Resultantly, the appeal is accepted, the impugned judgment to the extent of ordering confiscation of .22 bore pistol bearing No.34085, which was licenced weapon of the complainant is set-aside and directions are issued that the aforementioned weapon be released in favour of the appellant against proper receipt and identification.

April 6, 2017 **(T.P.S. MANN)**
amit rana **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No

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