

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

**Criminal Misc. No.M-36109 of 2016
Date of Decision: 19.07.2017**

Baljinder Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

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

Present:- Mr. Mohit Setia, Advocate
for the petitioner.

Ms. Simranjeet Kaur, AAG, Punjab.

HARI PAL VERMA, J. (Oral)

Petitioner – Baljinder Singh has filed the present petition under Section 482 Cr.P.C., impugning the order dated 17.3.2016 (Annexure P/4) passed by learned Additional Sessions Judge, Fazilka, whereby, the application moved by the petitioner for release of his two electric motors, which were recovered from the possession of the accused, was dismissed, despite the fact that in case FIR No.68 dated 29.7.2012 under Sections 379/413/401/411 IPC registered at Police Station Sadar Abohar, all the accused namely Ranjit Singh, Boota Singh, Jaspal Singh alias Pali, Gurmail Singh alias Kali were acquitted of the charges levelled against them.

Learned counsel for the petitioner has argued that as per the aforesaid FIR, two electric motors of the petitioner were stolen by the accused. However, during trial, the prosecution has not been able to prove the charges levelled against the accused, leading to their acquittal. He submits that once the accused have been acquitted of the charges framed against them, the petitioner is entitled for release of the case property i.e. electric motors, on *superdari*. He has further submitted that the petitioner had moved application dated 8.1.2016 (Annexure P2) for release of two electric motors recovered from the possession of the accused before learned Additional Sessions Judge, Fazilka, who though heard the petitioner at length and also admitted the inadvertent mistake on the part of the Court in not ordering release of the electric motors, but the said application was declined on the ground that the said fact was not brought to the notice of the Court at the time of passing of the judgment dated 21.5.2015, which was not challenged and as such, the same attained finality.

On the other hand, learned State counsel, on instructions from HC Gurmail Singh, submits that the respondent-State has no objection in case the electric motors, so recovered, are released to the petitioner, however, the petitioner is required to show his ownership over the motors so confiscated.

I have heard learned counsel for the parties and perused the impugned order dated 17.3.2016.

The order dated 21.5.2015 passed by learned Additional Sessions Judge, Fazilka clearly depicts that the prosecution has failed to prove its charges against the accused and in these circumstances, the

accused were acquitted of the charges levelled against them. Once the accused have been acquitted of the charges levelled against them, it was incumbent upon the Court to order release of the aforesaid electric motors, on *superdari*, subject to its satisfaction. Moreover, in the impugned order dated 17.3.2016, learned Additional Sessions Judge has clearly admitted the inadvertent mistake on the part of the Presiding Officer. Thus, when there is no *bona fide* mistake on the part of the Court itself, the litigant-petitioner should not suffer for the same. In these circumstances, this Court has no hesitation to order release of the electric motors, in case the petitioner establishes his ownership over the same.

Accordingly, the present petition is allowed, the order dated 17.3.2016 passed by learned Additional Sessions Judge, Fazilka is set aside and the petitioner is held entitled for release of the electric motors, however, subject to the satisfaction of the Court, so as to proving ownership of the petitioner over the motors so confiscated.

July 19, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No