

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

CRA-S-2900-SB-2016
Decided on : 28.05.2019

Jagjit Singh

..... Petitioner

Versus

State of Punjab and ors.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pratham Sethi, Advocate
for the appellant.

Mr. A.A.Pathak, Addl. AG, Punjab.

Mr. Rupinder Khosla, Sr. Advocate with
Mr. R.P.S.Brar, Advocate
for respondent No.3.

Manjari Nehru Kaul, J.

Challenge laid in the instant appeal is to the order dated 06.06.2016 passed by the Learned Judge, Special Court (TADA) whereby an application moved by the appellant under Section 452 Cr.PC for issuance of direction to 'GMADA' for transfer of property bearing House No.131, Phase IV, Mohali in his favour stood declined.

2. The facts in brief leading to the present case are as under:

On 12.02.1987 a dacoity was committed by some unidentified persons and FIR No.26 dated 12.02.1987 was registered at Police Station Division No.6, Ludhiana for the offences punishable under Sections 120-B, 395, 397, 342, 171, 412 IPC, under Section 25 of Arms Act and under Sections 3, 4, 5 and 6 of TADA in which the appellant along with his

brother Baba Dalip Singh was arrayed as an accused amongst others. Subsequently, the investigation was taken over by the CBI, and during the course of trial, the appellant turned approver in terms of Section 306 Cr.PC and appeared as PW-27. During his deposition as PW-27, he deposed about the fact of purchase of a house bearing No.131, Phase IV, SAS Nagar, Mohali on 29.07.1987 i.e. after the date of dacoity, by his brother Baba Dalip Singh for a sum of ₹ 3 lakhs in the name of the appellant.

3. The grievance of the appellant originates from the letter dated 29.07.1995 whereby his request for transfer of the abovementioned property in his name by Punjab Urban Development Authority, Mohali stood declined. Aggrieved by the said decision, the appellant preferred CWP No.7690 of 2009 before this Court wherein the Division Bench observed that since the trial was pending, therefore, the writ petitioner could approach the authority after the conclusion of the trial. Though the said order was challenged by way of SLP before the Hon'ble Supreme Court, no indulgence was shown and it was observed that the writ petitioner could avail of his remedy available in terms of Section 452 Cr.PC. This is how the present application was filed by him before the trial Court. The said prayer has been declined by the trial Court. Feeling aggrieved, the appellant again approached this Court by way of filing the present appeal.

4. Learned counsel for the appellant contends that once the appellant had been extended pardon in terms of Section 306 Cr.PC and had appeared as prosecution witness, the learned trial Court committed a serious error in the eyes of law by ignoring the important facts pertaining to the case and declining his prayer as he was not an accused before the trial

Court.

5. Heard learned counsel for the parties and perused the material available on record.

6. It would be relevant to reproduce Section 452 Cr.PC, which is as follows:

Section 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 entitle 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.*

7. From the bare perusal of Section 452 Cr.PC, it is amply clear that this provision of law pertains only to disposal, destruction, confiscation, delivery of property to a person at the conclusion of the trial and it nowhere mandates a direction to a public authority to carry out a certain act.

8. The appellant in the instant appeal has prayed that a direction be issued to GMADA to transfer the property in question i.e. House No.131, Phase IV, Mohali in his name. Obviously, this Court in terms of Section 452 Cr.PC cannot direct GMADA to transfer the aforementioned property in the name of the appellant. The power to issue a writ of mandamus under Article 226 of the Constitution of India lies with the Writ Court. Therefore, the application as well as the instant appeal are totally misconceived.

9. Moreover, what had been confiscated were the allotment letter and other property documents of which the appellant already has photocopies as per his own averments.

10. Learned Addl. Sessions Judge, Ludhiana while dealing with the issue of direction to GMADA for transfer of the aforementioned property observed as under:

“So far as the question of directing the GMADA, Mohali under Section 452 Cr.PC, to transfer the ownership of House No.131, Phase IV, Mohali, in the name of applicant is concerned. I have gone through the Section 452 Cr.PC. Under this Section, on conclusion of inquiry or trial, 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.

However, there is no such property taken into custody during investigation of the case, which can be ordered to be returned to the applicant. Moreover, only documents or property can be ordered to be returned under Section 452 Cr.PC. Therefore, no order can be passed directing any authority to transfer the ownership of the immovable property in the name of the applicant.”

11. From a bare perusal of the above portion of the impugned order, it is evident that the Court has minutely examined the material on record and has passed the order by correctly appreciating the facts and provisions of law. Therefore, no ground is made out to interfere in the impugned order dated 06.06.2016 passed by the trial Court.

12. Accordingly, the present petition stands dismissed.

28.05.2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No