

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

**C.R.A. 413 of 2016
CRAN 2 of 2022**

**Sariful Alam
-Vs-
State of West Bengal**

For the Appellant : Mr. Pratip Kr. Chatterjee

For the State : Mr. Anwar Hossain

Heard on : 11.05.202, 17.05.2022

Judgement on : 17.05.2022

Joymalya Bagchi, J. :-

Appellant has assailed the judgment and order dated 22.03.2016 passed by the learned trial court to the extent it directs seized fire arm being SBBL 12 Bore gun with trade mark kolsee Gun Works having registration no. 27642-11 and ammunition.

I have gone through the evidence on record as well as the impugned order of acquittal.

In the trial, accuseds Motiur Rahaman (father of the appellant), Humayun Kabir, Karim Sk and Julphikar Sk @ Mithu were charged as follows :

“that all of you in furtherance of common intention on 4.2.2012 at about 1 p.m. fired from your licensed gun aiming to Sonora Bibi, Somerun Bibi and Merina Bibi to kill them, with such intention or knowledge that if by that act you all had caused their deaths you all would have been guilty of murder and thereby you committed an offence punishable under section 307/34 of the IPC and within (3) the cognizance of the court of sessions.”

From the evidence led during trial it appears that a single gun with four ammunitions were recovered from the house of Motiur Rahaman, father of the appellant. There is no evidence that the gun was fired in the course of incident. In conclusion of trial, learned trial judge acquitted the accused persons including Motiur Rahaman. But by the impugned order, trial court mechanically directed confiscation of the seized alat including the fire arm and ammunition belonging to the appellant. Being aggrieved by the order of confiscation, appellant initially filed an application before the trial court seeking return of the fire arm which came to be dismissed on 27.4.2016. A revision petition being CRR 1864 of 2016 was filed before this court which was disposed of vide order dated 15.6.2016 giving liberty to the appellant to seek appropriate remedy by way of appeal under section 454 Cr.P.C. Hence the present appeal.

Mr. Chatterjee, learned advocate for the appellant submits that the fire arm and ammunition belongs to him and the same may be returned.

This court called upon the State to file a report with regard to the plea of the appellant. Report has been placed on record which shows that the appellant is the licence holder of the gun bearing no. 135/DMK issued by District Magistrate Rambar (J & K) PP but there was no application for entry in the office of the District Magistrate, Murshidabad.

From the materials on record it appears that the gun was seized on 16.2.2012. Immediately prior to the seizure the licence of the appellant had been extended by the Additional District Magistrate Rambar till 3.3.2012. Hence the appellant had a valid licence to possess the gun at the time of seizure. Evidence on record does not show there was any illicit use of the fire arm or ammunition. Hence, appellant, who is the owner of the fire arm and ammunition is entitled to get back the said articles.

Under such circumstances, I am inclined to set aside the order of confiscation passed by the trial court so far as it relates the fire arm and ammunition and direct that the seized fire arm being SBBL 12 Bore gun with trade mark kolsee Gun Works having registration no. 27642-11 with ammunition be handed over to the appellant who within seven days of delivery of the arm shall make appropriate application for renewal/grant of licence before the appropriate authority failing which the authority shall be at liberty to initiate proceeding for confiscation of the fire arm in accordance with law.

Appeal is accordingly allowed. Connected application being CRAN 2 of 2022 stands disposed of.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

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