

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2475 OF 2018

Rajdeep Haibatrao Surve

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr.Dinesh P. Adsule with Ms.Ayesha Momin, Advocates for petitioner.
Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th August 2022

PC :

1. The petitioner is aggrieved by clause-(iv) of the operative part of order dated 16th July 2009 passed by Judicial Magistrate, First Class, Mohol in Regular Criminal Case No.63 of 2000.

2. The petitioner was prosecuted for offences punishable under Sections 9,51 and 52 of Wild Life Protection Act, 1972 vide RCC No.63 of 2000. Learned JMFC, Mohol vide judgment and order dated 16th July 2009 acquitted the petitioner for the offences under Sections 9, 51 and 52 of Wild Life Protection Act. However, it was directed that muddemal article double barrel 12 bore gun with two live cartridges be forwarded to District Magistrate for appropriate orders regarding disposal.

3. On perusal of the judgment and order dated 16th July 2009 it is apparent that prosecution could not prove the charges against petitioner which has resulted in acquittal. The Trial Court has analyzed the evidence and arrived at conclusion that prosecution has

failed to prove its case. The offences are not proved against petitioner.

4. The petitioner thereafter preferred an application before the same Court seeking custody of muddemal article i.e. double barrel 12 bore gun which was seized during investigation and subject matter of RCC No.63 of 2000. The police gave no objection for handing over the article to petitioner. Learned JMFC, Mohol by order dated 22nd September 2014 rejected said application primarily on the ground that no proceedings are pending before the said Court. Thereafter petitioner preferred Criminal Miscellaneous Application No.39 of 2017 before Sessions Court challenging the order with regards to custody of double barrel 12 bore gun. The said application was rejected by Additional Sessions Judge-5, Solapur vide dated 7th November 2017 passed by on the ground that there is delay in preferring the said application.

5. Learned advocate for petitioner submitted that double barrel 12 bore gun has been lying in the custody of respondents for no reason. The petitioner has been acquitted of all the charged. It is not established by the prosecution that petitioner has used double barrel 12 bore gun in violation of Wild Life Protection Act.

6. Learned APP submitted that presently the gun is lying with Police Head Quarters at Solapur. It is submitted that Trial Court while acquitting the accused has directed that the gun be forwarded to the District Magistrate.

7. On perusal of the judgment passed by Trial Court it is apparent

that prosecution has failed to prove the charges against petitioner. It is not established that the petitioner was instrumental in using the double barrel 12 bore gun in violation of Wild Life Protection Act. The gun was seized during investigation. It is lying in custody of police since 1999. It is also pertinent to note that police had given no objection for handing over custody of the said gun to petitioner.

8. Considering the aforesaid circumstances, prayers in the petition can be granted :

ORDER

- (i) Writ Petition is allowed and disposed of;
- (ii) The order dated 16th July 2009 passed Judicial Magistrate, First Class, Mohol in RCC No.63 of 2000 to the extent to clause-(iv) of the operative part of the judgment directing that double barrel 12 bore gun and two cartridges be handed over to the District Magistrate, is quashed and set aside;
- (iii) The orders dated 22nd September 2014 passed by Judicial Magistrate, First Class Mohol in Criminal Miscellaneous Application No.37 of 2014 and order dated 7th November 2017 passed by Additional Sessions Judge-5, Solapur in Criminal Miscellaneous Application No.39 of 2017 are quashed and set aside;
- (iv) The double barrel 12 bore gun No.411116 and two live cartridges seized in CR No.3129 of 1999 registered with Mohol Police Station, Mohol, District Solapur, be returned to the petitioner.

(PRAKASH D. NAIK, J.)

MST