

**Parmeshwar Singh Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/464263](http://sooperkanoon.com/464263)

**Court :** Allahabad

**Decided On :** Jun-06-1962

**Reported in :** 1963CriLJ342

**Judge :** S.D. Singh, J.

**Appellant :** Parmeshwar Singh

**Respondent :** The State

**Judgement :**

ORDER

**S.D. Singh, J.**

1. The applicant Parmeshwar Singh, who was a constable at the Allambagh Police Station, was prosecuted for having been found in possession of an unlicensed service revolver No. 689816, which belonged to the Station Officer S.I. Virendra Singh Tomar. After having taken the revolver in his possession, the applicant is said to have proceeded on leave. When the theft was detected, investigation was at once started and at about 7-30 a.m. on 22nd November, 1960, the revolver was recovered from the folds of the applicant's dhoti at his house.

2. The applicant denied the recovery. The suggestion on his behalf was that it was planted on him by the Investigating Officer.

3. Four persons were relied upon by the prosecution for the recovery of the revolver from the possession of the applicant, namely, Jang Bahadur Singh (P.W. 6), Jang Bir Singh (P.W. 7), Ram Sumiran (P.W. 1) and Ram Ghulam Singh (P.W. 2). The suggestion on behalf of the applicant before the Magistrate was that Ram Sumiran Singh and Ram Ghulam Singh, the two search witnesses, taken by the police officer were named by him. as accused in connection with the murder of his brother and the applicant examined Cheddi Singh (P.W. 2) in support of that contention. Both the witnesses were questioned about the murder of the applicant's brother. They denied that they had any hand in it. No question was put to them if they were named in the First Information Report or if there was any enquiry against them. Even copy of the First Information Report was not produced. Nothing has been brought out in the statements of these two witnesses to show that they had any enmity or ill-will against the applicant. Ram Ghulam Singh (P.W. 2) has admitted that the applicant's brother was murdered in his village and that since then there is enmity between the people of village Malawan and the applicant. But that does not mean that Ram Ghulam Singh has been entertaining any feeling of ill-will against the applicant so as to give false evidence against him.

4. The recovery of the revolver from the possession of the applicant is also evidenced by the recovery memo, Ex. Kai, whose copy was given to the applicant. The applicant endorsed over it that he received copy of the same,

5. What was urged on behalf of the applicant was that the two search witnesses, Ram Sumiran Singh and Ram Ghulam Singh, were brought by the Sub-Inspector from the village Malawan, that these witnesses did not give their search before the search was made and that the provisions of Section 103(1) of the Code of Criminal Procedure were not complied with. It is, however, not correct that the Sub-Inspector did not take any witness of the locality with him when the recovery was said to have been made. Lachhman Singh (P.W. 3) and Jwala Singh of the same village were also taken by the Sub-Inspector for the search and they have even signed the recovery memo. What, however, happened was that Lachhman Singh turned hostile and Jwala Singh was not examined as a witness in the case.

6. The search, which was taken by the Sub-Inspector for the recovery of the pistol was not of the house but of the person of the applicant and Section 103(1), which refers to 'respectable inhabitants of the locality in which the place to be searched is situate' clearly refers to a search of the place and not person of an accused and this is what has been held by their Lordships of the Supreme Court in *Sunder Singh v. State of Uttar Pradesh* : 1956 CriLJ801 . In that case the police Sub-Inspector had recovered the shoes of the accused and their Lordships held that it did not amount to the search of the place or person, but they also pointed out that Section.103 did not apply to the search of a person. In the words of their Lordships:

The section applies when a search is to be made of a place. It does not apply to the search of a person.

It was then pointed out that the Investigating Officer should have sealed the revolver as soon as it was recovered and in support of that contention reference was made to an unreported decision of this Court in *Ranjeet Singh v. The State*, Criminal Revns. Nos. 87, 132 and 237 of 1961 (All) decided by Verma, J. on 20th December, 1961, at Lucknow. Eight unreported cases are referred to in this decision and it has been observed:

It has been held in these cases that, as the recovery of weapons in a case under Sections 399 and 402 of the Indian Penal Code is an important circumstance upon which reliance is placed by the prosecution for determining the question whether the accused persons had assembled for the purpose of committing dacoity and whether they had made preparations for it, absence of evidence about the sealing of the incriminating articles alleged to have been recovered and with regard to the movements of these articles subsequent to their recovery is a serious defect in cases of this type.

7. No provision under the Code of Criminal Procedure was referred to by the learned Counsel for the applicant which makes it obligatory for the recovered articles being sealed on the spot. In certain cases common sense demands that they should be so sealed so that there may not be any dispute about the identity of such articles. Recovery of unlicensed arms, as generally happens in cases under

Sections 399 and 402 of the Indian Penal Code may become doubtful if it cannot be established at the time of the trial that the particular arms were those which were recovered from the possession of the accused and in their case, therefore, it may be necessary to seal them on the spot, if there is no clear mark of identification over them. Recovered property in cases of theft and dacoity also requires to be sealed on the spot so that there may be no doubt about the correctness or genuineness of subsequent identification proceedings. In this particular case, however, the revolver recovered was a numbered weapon of a particular make. The recovery memo gives its description in full and there could, therefore, be no question about the identity of the particular revolver which was recovered from the possession of the applicant. It was not at all necessary, therefore, for the Sub-Inspector, who recovered the revolver, to seal it on the spot and failure on his part does not at all amount to a defect in investigation.

8. It was pointed out that the report about the recovery at the police station was very much belated. The recovery was made at 7-30 a.m. while the report was made at police station Paraspur at 11-30 a.m. i.e., after four hours. The police station is at a distance of three miles. The preparation of the recovery memo would take some time. The applicant and his wife both were arrested and they had to be brought at the police station and the evidence is that the party had to walk back on foot. It cannot, therefore, be said that there was unexplained delay in the making of the report.

9. Lastly it was urged that the sentence of one year's rigorous imprisonment was rather severe and might be reduced to the period already undergone. It was pointed out that the applicant has undergone more than ten months' rigorous imprisonment as against the sentence of one year. I do not, however, think there is any justification whatsoever for reducing the sentence even by a single day. Recovery of an unlicensed arm is serious by itself and when an offence of this nature is committed by one whose duty it is to prevent commission of crime, the offence is all the more serious. The application in revision is dismissed. The applicant will surrender to his bail bonds and serve out the remaining sentence.