

Ananullah Khan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-27-1986

Reported in : 1986(1)WLN769

Judge : Gopal Krishna Sharma, J.

Appeal No. : S.B. Criminal Misc. Appeal No. 409 of 1985

Appellant : Ananullah Khan

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Mehrish

Disposition : Appeal allowed

Judgement :

Gopal Krishna Sharma, J.

1. This is an appeal under Section 454 Cr.PC against the judgment of learned Addl. Sessions Judge, Baran, by which he ordered to confiscate the gun seized by the police during the investigation.

2. Gopal Lal Gujar, filed a complaint at Police Station, Modpur, on 4th April, 1983, to this effect that he was grazing his cows towards Utawali river and he was sleeping under the shed of a black berry tree. Then 8 or 10 persons, out of these 3

persons were armed with gun & others were armed with Lathis reached there and told him that he had' gone with Banjaras to lodge the report at the Police Station and they fired the gun towards him with the intention of killing him. On hearing the sound of the gun Mohanlal, Latoor and another Mohan reached there running. On seeing these persons the assailants ran away from there. The assailants were chased by Mohan and others. They caught two persons out of them and their gun was snatched away. On this report case was registered under Sections 307, 149 and 147 IPC. After completing the investigation police submitted a challan against 5 persons under Sections 148, 307/149 IPC before the Munsif and Judicial Magistrate, Atru, who committed them to the court of learned Addl. Sessions Judge, Baran. After completing the trial the learned Addl. Sessions Judge, acquitted all the accused persons but ordered the confiscation of the gun, against which the present appeal arises.

3. Mr. Mehrish, learned Counsel for the appellant argued that the gun which was seized by the police during the investigation was the gun of the appellant Ananullah Khan, and the licence of the gun is in his own name. Mohanlal, had snatched away this gun from one of the assailant and he produced it before the police. It is not in the evidence that this gun was used for commission of any crime. It is also not in evidence that the complainant received any gun shot injury. The learned Addl. Sessions Judge, in the judgment has stated that the doctor has denied this fact that the complainant had any injury by gun shot. While referring Section 452 Cr.PC he argued that when a trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal or confiscation or delivery of the property to any person claiming to be entitled to possession thereof regarding which any offence appears to have been committed or which has been used for the commission of any offence. In the present case, the learned Addl. Sessions Judge, did not come to this conclusion that this gun was used for the commission of any offence. It is not on the record that this gun was fired and the complainant was injured by the gun shot. On the contrary, the injury report shows that the complainant did not receive any gun shot injury as such the gun which was seized by the police and produced in the court was not used for the commission of any offence. The order of the learned Addl. Sessions Judge, Baran, regarding confiscation of this gun is incorrect. Mr. Mehrish, learned Counsel for the

appellant, placed reliance on the decision of the Hon'ble Supreme Court in N. Madhvan v. The State of Kerala : 1979 CriLJ1197 . In this case their Lordships have observed that an analysis of the provision of Section 452(1) Cr.PC would show that it refers to property or documents (a) which is produced before the court, or (b) which is in the custody of the court, or (c) regarding which any offence appears to have been committed or (d) which has been used for the commission of any offence. It has been further observed that at conclusion of the enquiry/trial, the disposal of any class of the property may be made by (i) destruction, (ii) confiscation, or (iii) delivery to any person entitled to the possession thereof. In the case before their Lordships it was further observed that the gun in question does not fall either under class (c) or class (d) because it is neither 'property' regarding which any offence appears to have been committed 'nor' which has been used for the commission of any offence'. It was further observed by their Lordships:

The words 'may make such order as it thinks fit' in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode of manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well recognized principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule, or practice is not to be lightly made, when there is no dispute or doubt as in the instant case that the property in question was seized from the custody of such accused and belonged to him.

4. After considering the arguments and after perusing the judgment of Hon'ble Supreme Court in N. Madhavan v. The State of Kerala (supra), I am of the opinion that the learned Additional Sessions Judge, has not passed the order judicially in accordance with the principles and the provisions of Section 452(1) Cr.PC. The property was not used for the commission of any offence. The complainant did not receive any gun shot injury. The gun belongs to the appellant who holds its valid licence. Therefore, this should have been returned to the appellant, The order of

the confiscation of the gun cannot be maintained and is hereby set-aside.

5. The appeal of the appellant is accepted and the order of the confiscation of the gun is set-aside and the gun be returned to the appellant after seeing that the valid licence is duly renewed in his name.

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