

Prithvi Raj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-05-2001

Reported in : 2002(3)WLN304

Judge : Sunil Kumar Garg, J.

Appeal No. : S.B. Criminal Appeal No. 453 of 1998

Appellant : Prithvi Raj

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused appellant Prithvi Raj against the order dated 16.6.1998 passed by the learned Sessions Judge, Sri Ganganagar by which he rejected the application of the accused appellant filed Under Section 452 Cr.P.C.

2. It arises in the following circumstances:

A charge-sheet was submitted against the present accused appellant and some other accused persons for the offence punishable Under Sections 302, 379, 447,

147 etc. of I.P.C. and Under Section 27 of the Indian Arms Act in the Court of Magistrate, Suratgarh and from where the case was committed to the Court of Session, Sri Ganganagar and it was registered as Sessions Case No. 83/94 State v. Raj Kumar and others.

After conclusion of trial, the learned Sessions Judge, Sri Ganganagar through his judgment and order dated 30.11.1994 convicted the present accused appellant and another accused Raj Kumar for the offence Under Section 302 and 447/34 I.P.C, but acquitted some other accused persons. The learned Sessions Judge in that judgment also passed an order of confiscation of 12 bore double barrel gun and license which were recovered by police during the course of Investigation through Ex.P/39 and Ex.P/40.

Aggrieved from the said judgment and order dated 30.11.1994 passed by the learned Sessions Judge, Sri Ganganagar, the present accused appellant and another accused Raj Kumar preferred appeal before this Court which was registered as D.B. Criminal Appeal No. 593/94 and this appeal was allowed by this Court vide judgment dated 8.4.1996 and conviction and sentence of the accused appellant and another accused Raj Kumar were set aside and they were acquitted of the charges framed against them.

After passing of the judgment by this Court dated 8.4.1996, the present accused appellant moved an application Under Section 452 Cr.P.C. before the learned Sessions Judge, Sri Ganganagar on 9.6.1997 for delivery of 12 bore double barrel gun and the license, which were recovered by the police from his possession. But, the learned Sessions Judge through his order dated 16.6.1998 rejected the application of the accused appellant holding inter-alia that since through the judgment and order dated 30.11.1994, the gun in question was ordered to be seized for the State and furthermore, it was ordered to be handed over to S.P., Sri Ganganagar and that order was passed Under Section 452 Cr.P.C. and since the accused appellant had not preferred any revision or appeal against that order and the Court had no power to review its own order, therefore, it would not pass any order reversing the order dated 30.11.1994 and thus, rejected the application of the accused appellant.

Aggrieved from the said order dated 16.6.1998 passed by the learned Sessions Judge, Sri Ganganagar, this appeal has been filed by the accused appellant.

3. In this appeal, it has been argued on behalf of the accused appellant that the impugned order passed by the learned Sessions Judge, Sri Ganganagar is erroneous one as the judgment and order dated 30.11.1994 were set aside by the Division Bench of this Court while acquitting the accused appellant and another accused Raj Kumar through judgment dated 8.4.1996 and thus, the order of confiscation of the gun in question alongwith license also stands set aside and therefore, the view of the learned Sessions Judge is totally erroneous one. Hence, it was prayed that the Impugned order dated 16.6.1998 passed by the learned Sessions Judge be set aside and the case be remanded back to the learned Sessions Judge, Sri Ganganagar for passing a fresh order for delivery of gun alongwith license according to law.

4. On the other hand, the learned Public Prosecutor supported the impugned order passed by the learned Sessions Judge, Sri Ganganagar.

5. I have heard the learned Counsel for the accused appellant and the learned Public Prosecutor and gone through the material on record.

6. In my considered opinion, the view of the learned Sessions Judge is erroneous one for the simple reason. That if the accused is acquitted of an offence, the court must save in exceptional circumstances, restore the property to him from whose possession it was recovered, when no offence is committed in respect of it and he claims it as his own.

7. There may be cases where the facts and circumstances are such that it would not be right to deliver the property to the accused because he is not the person entitled to possession. But, in the present case, since accused appellant was acquitted of the charge of murder by the Division Bench of this Court, therefore, gun in question and license, which were recovered from his possession should be returned to him.

8. For the reasons stated above, the learned Sessions Judge was not justified in rejecting the application of the present appellant for delivery of the gun in question and license which were recovered from him and thus, the impugned order dated 16.6.1998 passes by the learned Sessions Judge, Sri Ganganagar is liable to be set aside and this appeal deserves to be allowed. The learned Sessions Judge, Sri Ganganagar should therefore consider the case of the appellant afresh regarding delivery of gun and license in question to him and the order for the delivery of the same, provided that these articles were recovered from him and he has the valid license for keeping this fire-arm and if the period of the valid license has already been expired, then the learned Sessions Judge may order for the delivery of the license to the appellant for getting it renewed and after the renewal of the license, the learned Sessions Judge may pass an appropriate order, if the appellant has no valid license in his favour, the arm in question can be confiscated.

Accordingly, this appeal filed by the accused appellant Prithvi Raj is allowed and the impugned order dated 16.6.1998 passes by the learned Sessions Judge, Sri Ganganagar is set aside and the case is remanded back to the learned Sessions Judge, Sri Ganganagar for passing a fresh order in the light of the observations just made above.