

Deepak Singh. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-27-2010

Judge : Bala Krishna Narayana,J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 451; Indian Penal Code (IPC) - Sections 147, 148, 149, 307.

Appeal No. : APPLICATION U/S 482 No. - 28366 of 2010.

Appellant : Deepak Singh.

Respondent : State of U.P.

Advocate for Pet/Ap. : Santosh Shukla, Advs.

Judgement :

1. Heard Shri Santosh Kumar, learned counsel for the applicant and learned AGA for the State. This is an application under Section 482 Cr.P.C. filed by the applicant with a prayer to set aside the order dated 19.11.2009 passed by Chief Judicial Magistrate, Auraiya, in Session Trial No. 151 of 2009 by which the application moved by the applicant for release of his revolver which is case property in case crime No. 169 of 2009 has been rejected as well as the order dated 3.6.2010 passed by the Sessions Judge, Auraiya, rejecting the revision preferred by the applicant.

2. The facts of the case which are not in dispute are that the applicant is the owner of revolver No.14545/08 S.G.N.5766T 6360. On the basis of First Information

Report lodged by Sushil Kumar at P.S. Kotwali, case crime No. 169 of 2009 was registered against the applicant under Sections 147, 148, 149, 307 IPC in which it was alleged that the applicant misused the aforementioned revolver causing injury as such the same was seized.

3. After investigation had completed and the case had been committed for trial, the applicant moved an application under Section 451 Cr.P.C. with a prayer to release his revolver. The said application was rejected by the Chief Judicial Magistrate, Auraiya by his order dated 19.11.2009 on the ground that the applicant had misused the said revolver in commission of an offence under Section 307 IPC and in doing so he violated the terms of the license subject to which he was granted fire arm and the property sought to be released was case property.

4. Aggrieved from the order of Chief Judicial Magistrate, the applicant filed an application in revision before the Sessions Judge, Auraiya, which was registered as Criminal Revision No.11 of 2010 and which was dismissed by him by his order dated 3.6.2010.

5. Learned counsel for the applicant submitted that the courts below have committed manifest error in rejecting the applicant's application for releasing the revolver and the reasons given in the impugned order for rejecting the applicant's prayer are totally erroneous and untenable. He further submitted that since there is no dispute regarding ownership of the revolver, the court below ought to have released the same in his favour subject to such conditions as it may have deemed necessary. He lastly contended that power under Section 451 Cr.P.C. is liable to be exercised expeditiously and judiciously and not in a manner as it has been done by the Courts below.

6. Per contra, learned AGA made submissions in support of the impugned orders. I have examined the submissions advanced by the learned counsel for the parties and perused the material brought on record. While examining Section 451 Cr.P.C, the Apex Court in the case of Sunderbhai Ambalal Desai v. State of Gujarat 2003 46 ACC 223 Para 6 of the aforesaid judgment is quoted below : 6. "In our view, the powers under section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely :-

"Owner of the article would not suffer because of its remaining unused or by its misappropriation Court or the police would not be required to keep the article in safe custody ;

7. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

8. In my opinion, since the ownership of the revolver is not disputed no useful purpose will be served in keeping the revolver in the custody of the court and the same can be released in favour of the applicant. The reasons given in the impugned orders for refusing the prayer of the applicant are wholly unsustainable in the eye of law and the impugned orders are liable to be set aside. The application is allowed and the orders dated 19.11.2009, 3.6.2010 are hereby quashed. The Chief Judicial Magistrate, Auraiya is directed to release the revolver No.4545/08 S.G.N.5766T 6360 in favour of the applicant subject to following conditions:

1. The applicant shall furnish a personal bond with two sureties each in the like amount to the satisfaction of the court concerned;
2. The applicant shall not alienate the revolver without the permission of the Court and before releasing the revolver, the Court concerned shall ensure that the photographs of the revolver are taken and countersigned by the complainant.
3. The applicant shall produce the revolver before the Court as and when required to do.