
(1989) 05 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1253 of 1986

Daljit Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-05-1989

Acts Referred:

Citation : (1989) 2 AICLR 339 : (1989) 2 RCR(Criminal) 158

Hon'ble Judges : Harbans Singh Rai, J

Advocate : R.K. Chhokar, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J.

1. An application was filed by Daljit Singh petitioner through Karam Singh for the return of the articles belonging to him which were taken into possession by the police. This application was filed on August 26, 1985. The learned Chief Judicial Magistrate, Karnal vide his order dated May 19, 1986, ordered that the 12 articles mentioned in the application be returned to Karam Singh, attorney of Daljit Singh applicant. Karam Singh was directed to execute Sapurdnama. State of Haryana went in appeal. Shri V.K. Kaushal, Sessions Judge, Karnal vide his order dated September 12, 1986 accepted the appeal and sent back the case to the Magistrate to decide it fresh as he was of view that Section 457, Cr.P.C. will not apply, but Section 458 Cr.P.C. will apply. Feeling aggrieved, Daljit Singh has filed this revision petition.

2. Mr. R.K. Chhokar, learned Counsel for the petitioner, has submitted that there was no right of appeal against the order passed by the Chief Judicial Magistrate as he had only ordered the return of the articles seized from Daljit Singh by the police to him.

3. I have gone through the record. None appeared for the State of Haryana. Without going into the proposition whether the order passed by the Chief Judicial Magistrate on May 19, 1986, was appealable or not, I find that the order of the learned Sessions Judge, dated September 12, 1986, is not legally maintainable.

4. It is not disputed that these articles were taken into possession from Daljit Singh by the police. It is also not disputed that the articles were not produced in Criminal Court during an enquiry or trial. Petitioner Daljit Singh wanted the return of his articles as they were not case property of any case and they were taken from him by the police. The learned Chief Judicial Magistrate ordered that the articles be returned to the petitioner. The learned Sessions Judge has approached the matter from an angle which is not permitted by law. He has held that Daljit Singh was legally required to prove before the Magistrate that he acquired those articles by legal means and in the absence of any evidence he is not entitled to get back these articles. It is very strange that the learned Sessions Judge has adopted this reasoning which is not to be appreciated. The articles were seized from Daljit Singh. They are not required in any case. He is not an accused in any case and he wants his articles back and the learned Chief Judicial Magistrate, after being satisfied, ordered the return of the articles on Sapurdari. The learned Sessions Judge has not taken note of the fact that when the articles were taken from the possession of Daljit Singh by the police, what sort of evidence he was required to produce to prove his ownership and under what law he was required to prove that he acquired those articles by legal means. It is presumed that when the articles are seized from the possession of a person by the police, he is the owner of the articles, unless somebody else with a better title claims them. No body has claimed these articles except Daljit Singh. The order of the learned Sessions Judge confiscating the articles to the State is unreasonable to say the least.

5. The order dated September 12, 1986, passed by the learned Sessions Judge is set aside and it is directed that the articles be returned to Daljit Singh, as ordered by the learned Chief Judicial Magistrate, Karnal, vide his order May 19, 1986. With this direction, the revision petition is disposed of.