

(2013) 09 MP CK 0169
In the Madhya Pradesh High Court
Case No : W.A. No. 511 of 2012

Dilip Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 307

Citation : (2013) 09 MP CK 0169

Hon'ble Judges : Rohit Arya, J; Rajendra Menon, J

Bench : Division Bench

Advocate : C.P. Sharma, for the Appellant; Raghvendra Dixit, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Heard on the question of admission. Challenge in this writ appeal u/s 2(1) of the Madhya Pradesh High Court (Appeal to Division Bench) Act 2005 is made to a order dated 02.07.2012, passed by the learned Writ Court in Writ Petition No. 4251/2012, whereby the writ petition filed by the appellant has been dismissed.

2. Appellant/petitioner is the holder of a arms licence and being aggrieved by an order dated 16.05.2011 passed by the District Magistrate, Morena whereby his licence was cancelled and the order of the appellate authority dated 11.04.2012 upholding the order passed by the District Magistrate, Writ Petition was preferred by the appellant/petitioner and the impugned order has been passed by the learned Writ Court.

3. It is seen from the record that petitioner was involved in Sessions Trial No. 149/2009, before the IV Additional Sessions Judge, Morena, with regard to offences punishable u/s 307 in alternate 307/149 of IPC and arm licence of the appellant/petitioner was cancelled due to his involvement in criminal case and finally even though the appellant was acquitted of the charge in the aforesaid criminal case by granting him benefit of doubt but cancellation of the arm licence

was not revoked and as the authorities have cancelled the arm licence of the appellant/petitioner, challenged the said action, in a writ petition and the learned Writ Court came to the conclusion that the appellant has been acquitted by granting him the benefit of doubt, accordingly after applying the principle laid down by the Division Bench of this Court in Ram Kumar Sharma Vs. State of M.P. and Others, , the Writ Court was of the view that as the appellant is acquitted by giving the benefit of doubt in a criminal case the same does not ipso facto entitle him for restoration of the arms licence.

4. Shri Sharma, learned counsel appearing for the appellant submits that the judgment relied upon by the learned Writ Court rendered in Ram Kumar Sharma (Supra) has no application in the present case as it has to be applied after verifying the fact of the criminal case and the nature of the acquittal has to be assessed after considering the involvement of the appellant in commission of offence. He further submits that if the material available on record is seen it would show that then the arm in question has not been used by the appellant, therefore, it is a fit case where the licence of the appellant should be restored.

5. Shri Dixit, learned Government Advocate refuted the aforesaid and submits that the appellant was involved in a criminal case, however he has been acquitted only because the witnesses had turned hostile and as a offence u/s 307 IPC was alleged against the appellant, he has been acquitted only by giving him the benefit of doubt. In such circumstances, the learned Writ Court has not committed any error in applying the principle laid down by a Division Bench of this Court in Ram Kumar Sharma (supra).

6. We have heard the learned counsel for the parties at length and perused the record.

7. We have also gone through the judgment of the Sessions Court in Sessions Trial No. 149/2009 rendered on 30th June 2011. From a perusal of the judgment rendered by the Sessions Court, it is seen that initially in the FIR name of the appellant was not included and the prosecution story goes to shows that one Ram Niwas Prajapati was injured by gun shot caused by another co-accused Ram Niwas S/o Shri Dhangu Gurja. The medical evidence and other relevant documents available on record in the criminal case shows that gun shot injury which was grievous in nature was caused by co-accused Ram Niwas and one rifle was also seized alongwith used and unused cartridges. It is also seen that there is no overt act attributed to the present appellant. Nothing is on record to show that the licenced gun of the appellant was used in commission of the offence nor was it seized during investigation therefore, it is a case where arm of the appellant was not used in the commission of crime. It is further seen from the record that name of the appellant has been included in the criminal case by way of filing a supplementary challan and the arm in question was not sized from the appellant during investigation or proceeding of the criminal case. That being so it is a case where there is no evidence on record to show that the appellant used the weapon for commission of the offence in question, however, after giving

benefit of doubt he has been acquitted from the offence by the trial Court. The case relied upon by the learned Writ Court i.e. Ram Kumar Sharma (supra) was a one where the person concerned was consistently involved in criminal cases and there was evidence which shows uses of the licenced arm for commission of the offence and, therefore, the present case is clearly distinguishable on the fact that the appellant herein even though is acquitted by granting him benefit of doubt but on a close scrutiny of the finding recorded in the criminal case, it is clear that the arm in question was not used for commission of offence and there is no material available on record to show that the appellant is guilty of misusing the arm licence granted to him in any manner whatsoever for commission of the offence. That being so even though he is acquitted on granting him the benefit of doubt but considering the fact that involvement of the arm in question for commission of the offence is not at all established there was no reason or occasion for canceling the arms licence of the appellant to that effect action of the appellant are unsustainable and required to be quashed.

8. Resultantly, the orders dated 02.07.2012, passed in Writ Petition No. 4251/2012 is set aside, order dated 16.05.2012, passed by the District Magistrate and the order dated 11.04.2012, passed by the appellate authority are also quashed. The respondents/authorities are directed to revoke the arm licence of the appellant and hand over the arm to the petitioner in accordance with law within a period of one month from the date of production of the certified copy of this order, if action in no other case is required to be taken. With the aforesaid, writ appeal stands allowed and disposed of.