

(2011) 04 MP CK 0045

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 49 of 2007

Surya Prakash Shukla and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Arms Act, 1959 — Section 29, 30

Criminal Procedure Code, 1973 (CrPC) — Section 452, 454

Madhya Pradesh Dacoitee and Kidnapping Affected Area Act — Section 25(1B)

Penal Code, 1860 (IPC) — Section 399, 402

Citation : (2011) 04 MP CK 0045

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—The Appellants have preferred this appeal u/s 454 of Code of Criminal Procedure. Being aggrieved by order of confiscation of 12 bore double barrel gun and riffle of 315 bore passed in judgment dated 16.10.2006 in Special Case No. 1/2006 by Special Judge appointed under M.P. Dacoitee and Kidnapping Affected Area Act.

2. Facts in short giving rise this appeal are that four persons Anmol Dwivedi, Ram Karan Yadav, Subran @ Sobran and Manoj Yadav have been arrested by P.S. Dhabori, District Rewa and after investigation they have been prosecuted u/s 399/402 of IPC and 11/13 of M.P. Dacoitee and Kidnapping Affected Area Act. It is alleged that a 12 bore double barrel gun and two riffles of 315 bore alongwith country made pistol and motor-cycles have been seized from the aforesaid persons.

3. On appraisal of evidence on record in Special Case No. 1/2006, learned Special Judge acquitted the aforesaid accused persons u/s 399/402 of IPC and 11/13 of M.P. Dacoitee and Kidnapping Affected Area Act, but learned trial Court has found guilty to aforesaid accused persons u/s 25(1B)(a) of the Act. He

further alleged that at the time of disposal of this appeal, these Appellants have filed an application u/s 452 of Code of Criminal Procedure , but trial Court on erroneous consideration without providing any opportunity to Appellants, dismissed their application and forfeited the aforesaid arms. Hence this appeal.

4. Learned Counsel for the Appellants submitted that the trial Court committed illegality in not following the proper procedure. He further submitted that Appellants are license holder of aforesaid arms. They also filed the affidavit in support of their application. He also submitted that the Trial Court committed error in not providing the proper opportunity to lead evidence in their favor, therefore, he prays for setting aside the order of confiscation and also prays for release of aforesaid arms in favor of Appellants. He relied on 1987 (1) MPWN 211, Abdul Rahim v. State of M.P..

5. On the other hand, learned Panel Lawyer formally objected the contention raised by the Appellants.

6. I have perused the impugned judgment, evidence and other material on record.

7. It is not disputed that these Appellants were not the culprit/accused before the trial Court. It is also reveals from record that before passing the order of confiscation, no notice was issued to the license holder/ Appellants. No doubt at the time of investigation, Police Dhabora has not investigated the matter in regard to the fact that seized 12 bore double barrel gun and two riffles of 315 bore belonging to whom and is there any license had been issued in favor of Appellants. It is also true in that event Appellants could have been prosecuted u/s 29 or 30 of the Arms Act, 1959, but on the basis of above lapses, the aforesaid arms cannot be confiscated without giving notice to the license holder as well as without giving proper opportunity to lead evidence in their favor. In Abdul Rahim's case (supra), it is laid down by this Court that when culprit himself is not an owner/license holder of the property then it would certainly be unjust to real owner/license holder to visit him with an order of confiscation of his property without affording him an opportunity of showing that he had no connection with the crime in question.

8. Same facts situation in this case in which Appellants were not prosecuted in connection with any crime under Arms Act. The accused tried by the trial Court were not a license holder of aforesaid arms. In these circumstances, I am of the view that the trial Court had committed the error in not providing the opportunity to Appellants for showing the fact that they had no connection with the crime in question. In these circumstances, the order passed in relation to, two riffles of 315 bore is not sustainable in law and is liable to be set aside.

9. In the result appeal is allowed. The order passed for confiscation of two riffles of 315 bore is hereby set aside and the trial Court is directed to provide the opportunity to lead evidence to the Appellants to show that they had no connection with crime. After providing aforesaid opportunity, trial Court may pass

the order according to law.

10. Appellants are directed to appear before the trial Court on 22.6.2011.