

(2014) 03 P&H CK 0243

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22814 of 2011 (O and M)

Union of India

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 451, 452, 452(1), 452(2)

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 175 PLR 451

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Brijeshwar Singh Kanwar, Advocate for the Appellant; Anu Pal, AAG, Punjab, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Challenge in this petition is to the order dated 20.06.1995 (Annexure P-2), passed by the Sessions Judge, Bathinda, whereby application filed by the Commandant 55 Bn CRPF for return of 9 MM pistol, bearing Butt No. 8, Body No. 245 P-251885, 1 live Amm 8 MM & 9 fired cases, has been dismissed. The pistol in question was used in the commission of murder. As per the judgment dated 09.11.1990 passed by the Sessions Judge, Bathinda, accused T.A. Bhaskar was convicted u/s 302 IPC and Section 27 of Arms Act, 1959. The conviction was upheld in appeal. In both the orders, no order with regard to the pistol In question was passed. Hence, vide impugned order, the Sessions Judge, Bathinda, ordered that the pistol be confiscated to the State.

2. As per Section 452(1) Cr.P.C., after conclusion of a trial in any criminal Court, the Court can make any order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession of the property or otherwise of any property or document produced before it or in its custody. Further, sub-section (2) of Section 452 Cr.P.C., reads as under:--

"An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

3. If a person claims delivery of any property under sub-section (1), he shall be entitled to possession thereof with or without imposing any condition i.e. executing bond etc.

4. On notice, reply on behalf of respondent Nos. 1 to 3 has been filed, admitting that the pistol used in the commission of the offence, is the property of Union of India and it was the service pistol of the accused.

5. After going through the facts and circumstances of the case, this Court is of the view that since the pistol in question was the property of Union of India, instead of passing an order of confiscating it to the State, the application of the petitioner should have been allowed keeping in view the provisions as envisaged u/s 452(2) Cr.P.C. The Hon"ble Supreme Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, while considering the provisions of Section 451 Cr.P.C., which deals with custody and disposal of property pending trial in certain cases, held that the seized property or vehicles should not be kept in police stations for a long period. The Magistrate should pass appropriate orders immediately by taking bond and guarantee as well as security for return of the said vehicles, if required at any point of time.

6. In the present case, vide judgment dated 09.11.1990, the Sessions Judge, Bathinda, convicted accused-T.A. Bhaskar u/s 302 IPC and Section 27 of the Arms Act, 1959. As per the provisions of Section 452(1) Cr.P.C., after conclusion of a trial, the Court can make any order as it thinks fit for disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession of the confiscated property. The pistol in question was the property of Union of India and as per Section 452(2) Cr.P.C., the Sessions Judge, Bathinda, could have passed an order for release of the said pistol to the accused, as the trial had already been concluded. Accordingly, the impugned order dated 20.06.1995 (Annexure P-2) is set aside and a direction is given to the respondents to release the aforesaid pistol to the petitioners without execution of any bond.

Writ petition stands allowed accordingly.