

(2013) 11 RAJ CK 0109

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 3984 of 2013 in Criminal Case No. 238 of 1999

Yash Dev Jain

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0109

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : P.S. Shukla, for the Appellant; Laxman Meena, Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

Nisha Gupta, J.—This criminal misc. petition u/s 482 Cr.P.C. has been filed against the orders dated 4.6.2003 and 16.1.2007 passed by the Judicial Magistrate Ist Class, Jaipur District Jaipur in Criminal Case No. 238/1999 whereby the impugned revolver seized and confiscated without the notice to the present petitioner and revision has also been dismissed. Hence this petition. The only contention of the present petitioner is that before making an order dated 29.3.2006 and order dated 16.1.2007 no opportunity of hearing was accorded to him and he has been discharged from the offence u/s 3/25 of the Arms Act after taking note of the fact that the licence in connection with impugned order was found to be valid hence he is appropriate person, the custody should have been given and reliance has been placed on N. Madhavan Vs. State of Kerala, wherein it has been held as under:

Let us now test the impugned order in the light of these principles. Can it be said to be an order made judicially? The answer is unhesitatingly "No". The Sessions Judge did not give any reason, whatever, for directing confiscation of this licensed gun admittedly belonging to the appellant-accused. Nor was there any material before him indicating the special circumstances which would warrant a

departure from the general rule aforesaid. Nor is there anything on the record to show that the Sessions Judge had, before passing the Order of confiscation, given an opportunity of being heard to the accused, specifically with regard to this matter. The order of confiscation of the gun was manifestly arbitrary.

2. There is no quarrel about legal position enumerated supra and the present petitioner has not been awarded any opportunity of hearing. Hence, the orders dated 29.3.2006, 16.1.2007 and 14.3.2007 are set aside. The matter is remanded with a direction to decide the controversy of custody of impugned weapon after awarding opportunity of hearing to the petitioner. Petition stands disposed of.