N. Madhavan

Vs

State of Kerala

Criminal Appeal No. 155 of 1973

(R.S. Sarkaria, P.N. Shinghal, O. Chinnappa Reddy JJ)

07.08.1979

JUDGMENT

SARKARIA, J. -

1. Appellant before us was tried by the Sessions Judge, Palghat on a charge under Section 302, Indian Penal Code, for shooting dead with his 12 bore licensed gun, one Bhaskaran alias Vasu on April 1, 1971. On the same day after the occurrence, the appellant surrendered at Police Station Koyalmannam, along with his licensed gun which he had used in shooting the deceased.

2. At the trial, accused Madhavan set up a plea of self-defence. In the light of the evidence brought on record, the Sessions Judge accepted this plea and held that the accused was entitled to the protection of Section 96, Penal Code and had therefore committed no offence. At the same time, without assigning any reason, he directed that "M.O. 1 gun shall be confiscated to the Government".

3. Against this direction of confiscation of the gun, Madhavan filed Criminal Revision No. 392 of 1972 in the High Court. The Revision was dismissed by a learned Single Judge with these observations :

> Although the direction is not accompanied by sufficient grounds for doing so, I do not think it proper to interfere with the order passed by the learned Sessions Judge . . . . in an order under Section 517, CrPC the principle is that it should be returned to the person from whose custody it was seized. That of course is the general rule. I am aware that there is no other claimant for the gun in this case and the gun naturally belongs to the petitioner. But the order of confiscation is made by way of sufficient safeguard against its use again by the petitioner. I do not think it necessary to interfere with the order of the court below.

4. Aggrieved by this order, dated November 9, 1972, of the High Court of Kerala, Madhavan has come in appeal by special leave under Article 136 of the Constitution.

5. The short question for decision in this case is, whether in the circumstances of the case, the courts below were right in confiscating this licensed gun instead of restoring it to the appellant.

6. Mr. Sudhakaran, learned Counsel for the appellant submits that the impugned order of confiscation of the gun was illegal because it has been made arbitrarily without assigning any reason. It is emphasised that in exercising its power under Section 517, Criminal Procedure Code, 1898, the Court has to act judicially in accordance with well-settled principles, the most

fundamental of which is that at the conclusion of the trial, resulting in acquittal of the accused, the property seized from his possession must be restored to him, particularly when the property undisputedly belongs to the accused. In support of this contention, reference has been made to Pushkar Singh v. State of Madhya Bharat (AIR 1953 SC 508 : 1954 Cri LJ 153) and Lalluram Mohanlal v. State of Gujarat (AIR 1967 Guj 268).

7. As against this, Mr. Nambiar, appearing for the State, maintains that there is no hard and fast rule, that the property seized from the accused, must on his acquittal be returned to him. The section, it is emphasised, gives the Court a very wide discretion to choose any one of the modes of disposal mentioned in the section, irrespective of whether the trial results in acquittal or conviction of the accused. In the instant case, it is argued, the Court in the exercise of that discretion decided to confiscate the gun, which is one of the modes recognised by the section. The impugned order, therefore, could not be said to be without jurisdiction which would warrant interference by a revisional or appellate Court. In this connection, counsel cited Arjun Padhy v. State of Orissa (AIR 1975 Ori 198).

8. The material part of Section 517 of the Code of Criminal Procedure, 1898 [which has been re-enacted as Section 452(1) in the Code of 1973], reads as follows :

> When an inquiry or trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

An analysis of this provision would show that it refers to property or document (a) which is produced before the court, or (b) which is in the custody of the court, or (c) regarding which any offence appears to have been committed, or (d) which has been used for the commission of any offence. Then, at the conclusion of the enquiry or trial, the disposal of any class of the property listed above, may be made by (i) destruction, (ii) confiscation, or (iii) delivery to any person entitled to the possession thereof.

9. In the case before us, the gun in question does not fall either under class (c) or class (d) because it is neither "property" regarding which any offence appears to have been committed, "nor" "which has been used for the commission of any offence". The acquittal of the accused on the ground that this gun was used in causing the fatal injury to the deceased, only in self-defence, necessarily involved a finding that the gun was not used in the commission of any offence for which the accused was tried. The gun was obviously property falling under class (b).

10. The words "may make such order as it thinks fit" in the section. Vest the court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt - as in the instant case - that the property in question was seized from

the custody of such accused and belonged to him.

11. 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 in 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 thus manifestly arbitrary.

12. The High Court also, - if we may say so with respect - while noting that the order of confiscation of the gun passed by the Sessions Judge was "not accompanied by sufficient grounds", endorsed that order in a capricious and cavalier manner, "by way of" - as it fancifully says - "sufficient safeguard against its use again by the petitioner". There was absolutely no material before the High Court to show that in the past twenty years during which the appellant had been in lawful possession of this gun under a licence, he had ever used or attempted to use this gun for commission of any offence, from which, in the event of the gun being restored to him, a likelihood of his misusing the gun "again" could be reasonably predicated, or even suspected.

13. For all the foregoing reasons, we are of opinion that the impugned order of confiscation of the gun being arbitrary and unjust, cannot be sustained. We, therefore, allow this appeal, set aside the impugned order and direct that possession of this gun (M.O. 1) be restored to the appellant.

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