

and circumstances of the case. Thus, the approach of the courts below in this behalf was wholly wrong, illegal and misconceived. From the evidence on record, it could not be held that the mortgage was without any legal necessity. Consequently, this appeal succeeds, the judgments and decrees of the courts below are set aside and the suit is dismissed with costs.

P.C.G.

Before : H S. Rai, J.

MOHAN BIR SINGH,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 8—SB of 1988

April 29, 1989.

Arms Act (XI of 1878)—S. 25—Confiscation of licenced weapon—No notice issued to the owner—Opportunity of being heard not provided to the parties—Validity of such order.

Held, that if an adverse order was to be passed against the appellant, he should have been given a notice to show-cause as to why the weapon be not confiscated. As no notice was issued at the time of confiscation, the order confiscating the revolver is set aside and the case is remanded to the trial Court to decide the issue of confiscation after giving an opportunity of being heard to the parties.

(Para 5).

Appeal from the order of the court of Shri R. L. Anand, Additional Judge, Special Court, Ludhiana, dated 18th February, 1985, convicting and sentencing the appellant.

CHARGES AND SENTENCES : *U/s 25 of the Arms Act. To undergo R.I. for a period of 9 months and to pay a fine of Rs. 100 in default of which accused shall further undergo R.I. for two months.*

Case No. 184 dated 24th December, 1984

FIR No. 82 dated 14th February, 1984 U/s 25 of the Arms Act, P.S. Civil Lines, Ludhiana.

V. Ram Swaroop, Advocate, for the Appellant.

Charu Tuli, Advocate, for the Respondent.

Mohan Bir Singh v. State of Punjab (H. S. Rai, J.)

JUDGMENT

Harbans Singh Rai, J.

(1) Jawand Singh son of Jagir Singh, Driver resident of Talwandi Khurd District Ludhiana was prosecuted under Section 25 of the Arms Act and convicted by Shri R. L. Anand, Additional Judge, Special Court, Ludhiana,—*vide* his order dated 18th February, 1985.

(2) The allegation against Jawand Singh was that he was in possession of .38 bore Smith Weason U.S. revolver and as he could not produce any license for the same, he had committed an offence under the Arms Act. During trial it revealed that the weapon belonged to Mohanbir Singh in whose employment Jawand Singh was as a Driver and it was a licenced weapon of Mohanbir Singh who appeared as D.W. 1. Shri R. L. Anand, learned Additional Judge, Special Court, Ludhiana, while convicting Jawand Singh, confiscated the weapon to the State.

(3) Mohanbir Singh feeling aggrieved, filed a petition in the Hon'ble Supreme Court of India challenging the confiscation of the weapon. The apex Court directed him to approach this Court. A Division Bench of this Court presided over by Chief Justice, V. Ramaswami, ordered on December 18, 1987 that a regular appeal against confiscation be filed. The Bench also condoned limitation. Consequently, this appeal has been filed by Mohanbir Singh.

(4) I have heard the learned counsel for the parties and gone through the judgment. The main grievance of the appellant is that at the time the confiscation order was passed, he was not heard.

(5) Mohanbir Singh, appellant while appearing as DW.1 had stated that the weapon recovered from Jawand Singh was his licenced weapon. If an adverse order was to be passed against Mohanbir Singh, he should have been given a notice to show cause as to why the weapon be not confiscated. As no notice was issued at the time of confiscation, the order confiscating the revolver, Ex. P1 is set aside and the case is remanded to the trial Court to decide the issue of confiscation after giving an opportunity of being heard to the parties. Parties through their counsel are directed to appear in the trial Court on May 29, 1989. With this direction, the appeal is disposed of.

P.C.G.