

(1987) 05 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 1992-M of 1987

Joginder Singh

APPELLANT

Vs

Stat of Punjab

RESPONDENT

Date of Decision: May 1, 1987

Citation: (1988) 1 RCR(Criminal) 376

Hon'ble Judges: I.S.Tiwana, J

Advocate: M.M.S. Bedi, Jaspreet Singh, Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. On the death of the petitioner's father on 13.12.1981, he deposited his licensed 315 rifle No. 780079 in Police Station Nahianwala, as per requirement of subsection (1) of section 26 of the Arms Act 1959 (briefly the Act). Later, on 3.9.1985 he applied to the District Magistrate for permission to dispose of the above noted weapon. Instead of granting the relief prayed for, the Additional District Magistrate, Bhatinda has forfeited the weapon to the State, in exercise of his jurisdiction under section 21(3) of the Act. The primary reason that weighed with the said authority for the forfeiture of the weapon is that the petitioner failed to exercise his right of disposal of the rifle within a period of one year, as laid down in rule 46 (4)(b) of the Arms Rules, 1962 (briefly the Rules).

2. The petitioner impugns this order. His claim is that prior to the confiscation of the weapon in question, he was neither served with any proper notice, as envisaged by Rule 46 (5)(b) of the Rules, nor the Additional District Magistrate disposed of the objections raised by him in response to the notice issued to him in a proper and legal manner.

3. I have heard the learned counsel for the parties and find that the petitioner deserves to succeed.

4. So far as the contention of the petitioner that no notice in terms of rule 46 (5)(b) of the Rules was issued to him, the same appears to be devoid of merit. Though such a notice could be issued to him immediately after the expiry of one year of the deposit of the weapon with the Police, yet the issuance of the said notice at a latter date could not per se render that notice ineffective or of no consequence. Such a notice concededly was served on the petitioner on 21.5.1986. In reply to the said notice, he, however, raised a number of contentions, such as : (i) since no fresh licences were being issued for possession of arms, the petitioner could not secure one for possessing this weapon after the death of his father and (ii) he wanted to retain the weapon as a family symbol. He also pleaded that he was not aware of the time limit within which he was to make an application for the disposal of the weapon. These objections do not appear to have been considered by the Additional District Magistrate on merits. He simply chose to dispose of the same with the observation that the petitioner "has not shown sufficient cause for not disposing of the weapon within one year from the date of deposit." No consideration to the disability of the petitioner to possess this arm in the face of the Government policy of nonissuance of fresh licences was given any weight. I am, therefore, satisfied that the objections filed by the petitioner have been disposed of rather cursorily and without consideration of the same on merits. Besides this, I am also doubtful as to whether the powers vested in the District Magistrate under the Act could be exercised by the Additional District Magistrate.

5. At one stage, the learned State counsel urged that these proceedings are not competent under section 482 of the Code of Criminal Procedure. I am of the view that even if the learned counsel is right, this Court has enough jurisdiction to go into the matter under Articles 227 of the Constitution of India and I exercise that jurisdiction.

6. In the light of the above, I set aside the impugned order and direct that the weapon in question be retained in the District Malkhana for a period of four months from today and during this period, the petitioner would be entitled to dispose of the same to any licenceholder. In case the petitioner fails to dispose of this arm within the period stipulated above, then the same would stand forfeited to the State.