

Sukhjinder Singh Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 12, 1998

Citation: (1998) 2 RCR(Criminal) 519

Hon'ble Judges: V.K.Bali, J and M.L.Singhal, J

Advocate: A.G. Masih, R.P. Dhir, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This is a petition filed by Sukhjinder Singh under Articles 226/227 of the Constitution of India, whereby he has prayed for the issuance of

mandamus to the respondents that they shall not insist upon the deposit of licence by him regarding 32 bore revolver No A38975 and 315 bore

rifle belonging to him. He has also prayed for the quashing of the order Annexure P1 issued by Deputy Superintendent of Police (R) Hoshiarpur.

Allegations made in support of his prayer by the petitioner are that one Rattan Singh of village Dhakki was murdered by Sukhwinder Singh son of

Avtar Singh, Davinder Kaur and Ranjit Singh. In that regard case FIR No. 50 was registered on 29.4.1996. He is a witness in that case.

Sukhwinder Singh was feeling grudging with him on that account. An attempt was made to murder him on 22.10.1997 at 8.45 PM. Said

Sukhwinder Singh son of Avtar Singh along with Manjit Singh, Simar Kaur and some unidentified persons entered his Dera armed with guns. They

opened fire. His brother Rupinder Singh who was watching T.V. received multiple fire arm injuries, as a result of fire shot. In defence Rupinder

Singh also fired. Sukhwinder Singh and others ran away. Case FIR No. 106 was registered at Police Station, Hariana on 22.10.1997 under

Sections 307/452/34 Indian Penal Code and Sections 25/27 of the Arms Act against them on the statement of Rupinder Singh. Earlier also an

attempt had been made by that party with the object that the petitioner was directed to deposit his fire arms and after the petitioner deposited his

fire arms he became defenceless and they could eliminate his family without any defence being offered by the petitioner. Vide order Annexure P3,

District Magistrate, allowed him to retain .32 bore revolver No. A38975. He is in possession of the revolver as well as rifle. He and his family are

residing all alone in a farm spreadover 100 acres and there is no abadi nearby. If the petitioner is rendered without any fire arm he will become an

easy prey to those who are after his blood. He is keeping fire arms with to view a defend himself against an armed attack. Respondent No. 3 in

order to help Sukhwinder Singh party declared Sukhwinder Singh innocent in FIR ibid. Still Sukhwinder Singh was refused bail by the Additional

Sessions Judge, Hoshiarpur and Simar Kaur was refused bail by the High Court. Respondent No. 3 issued notice Annexure P1 to the petitioner

directing him to deposit fire arms within one day. It is alleged that respondent No. 3 has no jurisdiction to call upon him to deposit fire arms of

which he is licensee. It is the District Magistrate who is competent to call upon him to deposit fire arms in view of the Arms Act and that too after

he had heard him.

2. Respondents contested the writ petition, urging that there is an entry dated 1.4.1996 made by the then SHO Police Station, Haryana in Book

No. 70 that the petitioner is a notorious man. He indulges in fights and he has threatened Simar Kaur with his licensed .32 bore revolver. He has

recommended his fire arms to be deposited. There is another entry dated 22.7.1986 by the then SHO Police Station, Haryana in which he has

mentioned that Iqbal Singh father of the petitioner is a dangerous person and is harassing the poor villagers because he has links with some senior

officers. Proceedings under Section 107/151 Code of the Criminal Procedure were initiated against petitioner's father. Case FIR No. 126 dated

10.7.1986 was also registered against petitioner's father under Section 25 of the Arms Act. Entry dated 22.7.1986 further shows that on

9.7.1986 Sukhwinder Singh petitioner, his brother Rupinder Singh and other members of their family had tried to snatch stengun of HC Sangat

Singh and they had tried to crush him under the tractor. Case FIR No. 158 was registered under Sections 307/325/353/332/186/148 Indian Penal

Code at Police Station Sadar, Hoshiarpur in that behalf. Petitioner was convicted and sentenced to undergo rigorous imprisonment for 6 years

under Section 307 of the Indian Penal Code and 5 years under Section 333 Indian Penal Code with fine of Rs. 1,000/ by Additional Sessions

Judge, Hoshiarpur. Petitioner's record is thus not conducive to his being allowed to keep fire arms with him. He is not having fire arms for self

protection. Notice Annexure P1 was issued as a preventive measure in view of the provisions of Section 23 of the Police Act 1861 and 149/150

of the Code of Criminal Procedure so that there was no untoward incident. Notice Annexure P1 was issued to both the parties as precautionary

measure.

3. We have heard learned counsel for the petitioner, learned AAG Punjab and have gone through the record.

4. It was submitted by counsel for the petitioner that the Deputy Superintendent of Police (R) Hoshiarpur could not have called upon the

petitioner to deposit fire arms of which he is licensee as it is the District Magistrate under Section 21 of the Arms Act who can call upon the

deposit of arms etc. Section 21 of the Arms Act reads as follows :

Deposit of arms, etc., on possession ceasing to be lawful (1) Any person having in his possession any arms or ammunition the possession whereof

has, in consequence of the expiration of the duration of a licence or of the suspension or revocation of a licence or by the issue of a notification

under section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge

of the nearest police station or subject to such conditions as may be prescribed with a licensed dealer or where such person is a member of the

armed force of the Union, in a unit armoury.

Explanation in this subsection ""unit armoury"" includes an armoury in a ship or establishment of the Indian Navy.

(2) Where arms or ammunition have or has been deposited under subsection (1) the depositor or in the case of his death, his legal representative,

shall, at any time before the expiry of such period as may be prescribed, be entitled (a) to receive back anything so deposited on his becoming

entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or (b) to dispose, or authorise the

disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to

have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this subsection shall be deemed to authorise the return or disposal of anything of which confiscation has been directed

undersection 32.

(3) All things deposited and not received back or disposed of under sub section (2) within the period therein referred to shall be forfeited to

Government by order of the district magistrate:

Provided that in the case of suspension of a licence no such forfeiture shall be ordered in respect of a thing covered by the licence during the period

of suspension:

(4) Before making an order under subsection (3) the district magistrate shall by notice in writing to be served upon the depositor or in the case of

his death, upon his legal representatives, in the prescribed manner, require him to show cause within thirty days from the service of the notice why

the things specified in the notice should not be forfeited.

(5) After considering the cause, if any, shown by the depositor or as the case may be, his legal representative, the district magistrate shall pass such

order as he thinks fit.

(6) The Government may at any time return to the depositor or his legal representative things forfeited to it or the proceeds of disposal thereof

wholly or in part.

5. In our opinion scope of Section 21 of the Arms Act is totally different. Rule 47 of the Arms Rules, 1962 deals with the deposit of arms and

ammunition for safe custody other than Section 21 of the Arms Act.

6. Section 149 of the Code of Criminal Procedure throws upon a police officer the power to interpose for the purpose of preventing commission

of any cognizable offence, which lays down that he shall to the best of his ability prevent commission of any cognizable offence. The power of

arrest is one of the means to prevent the commission of cognizable offence conferred upon a police officer by Section 151 of the Code of Criminal

Procedure. It was submitted by Assistant Advocate General (Punjab) that notice Annexure P1 issued by the Deputy Superintendent of Police (R)

Hoshiarpur upon both the parties calling upon them to deposit their respective fire arms is quite legal as the intention was to prevent the commission

of cognizable offence by them.

7. Notice Annexure P1 issued by the Deputy Superintendent of Police (R) Hoshiarpur is administrative in nature and not judicial or quasijudicial. It

will be assailable in writ jurisdiction if it violates or infringes any fundamental rights. It was held in Gulab Abbas and others v. State of UP and

others, AIR 1981 SC 2198 that an order which is administrative in nature and not judicial or quasijudicial will be amenable to writ jurisdiction if it

violates or infringes any fundamental rights. When both the parties are rendered unarmed how there will be any edge in favour of one or the other

party. Notice Annexure P1 could be of temporary duration enuring only during the period there was apprehension of commission of cognizable

offence. In our opinion the petitioner could appear before Deputy Superintendent of Police (R) Hoshiarpur and satisfy him that the apprehension of

commission of cognizable offence was only unreal and illusory and therefore notice Annexure P1 be withdrawn so far as he was concerned.

8. For the reasons given above, this civil writ petition fails and is dismissed.