

**(2009) 10 AHC CK 0227**

**Allahabad High Court**

**Case No:** None

Rahul Sondhi

APPELLANT

Vs

Amritsar Sugar Mills Co. Ltd. and  
Others

RESPONDENT

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**Date of Decision:** Oct. 6, 2009

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 458, 458(2)
- Penal Code, 1860 (IPC) - Section 399, 402

**Citation:** (2010) CriLJ 2278 : (2011) 6 RCR(Criminal) 1870

**Hon'ble Judges:** Arun Tandon, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Arun Tandon, J.

Heard Shri P.C. Shukla, Advocate on behalf of the appellant. Nobody is present on behalf of the defendant even in the revised reading of the cause list. This second appeal is of the year 1976. Facts in short giving rise to the present second appeal are as follows:

2. A double barrel gun bearing No. 213347 is stated to have been stolen from the guard of M/s. Amritsar Sugar Mills Company on 11.02.1966 by one accused Ghissu. The proceedings resulted in Sessions Trial No. 95 of 1967. The accused was convicted of an offence under Sections 399, 402 IPC by the Sessions Judge. His conviction was however set aside by the learned Sessions judge, Muzzaffarnagar. The order for forfeiture of the gun was upheld. The Company made an application for return of the gun, not being successful filed Criminal Misc. Case No. 1327 of 1971 before the Hon"ble High Court. The High Court passed an order on 25.08.1971 which reads as follows:

There appears no controversy about the facts that the gun belongs to the applicant. The gun went out of their possession when it was in the custody of their Chowkidar and for reason beyond his control. The circumstances of the case warrant that the gun be restored to the applicant who certainly had no (sic) in the commission of the offence under Sections 399/402, IPC.

It is therefore, directed that the DBBL Gun No. 213347 which was directed to be forfeited by the Assistant Sessions Judge in S.T. No. 95 of 1967 and which order was confirmed in Appeal by the Sessions Judge, shall be returned to the applicant. The order of forfeiture recorded by the Trial Court and Court of Appeal is set-aside.

3. While the proceedings were pending, it appears that the gun was put to auction on 05.01.1970 under orders of the Magistrate concerned. One Shah Alam Zaidi, defendant/respondent No. 5 in the present Appeal is stated to have purchased the said gun in the auction held for a sum of Rs. 240/-. Shah Alam Zaidi subsequently sold the gun in favour of the present appellant namely Rahul Sondhi.

4. The Company filed Original Suit No. 585 of 1972 with the prayer that the possession of the gun be restored in favour of the plaintiff after obtaining possession of the same from defendant No. 5 i.e. the Appellant, in the alternative it was prayed that a sum of Rs. 3000/- be paid towards cost of the gun and a further sum of Rs. 1500/- be awarded as damages. The suit was contested by the auction purchaser as well as by the present appellant. It was stated that the order for auction of the property in question has not been subjected to any challenge and, therefore, the relief for return of the gun could not be granted.

5. The Trial Court by means of the judgment and order dated 24.01.1976 decreed the suit with cost. The defendants were directed to hand over the gun to the plaintiff within the time specified and in case of default the plaintiff was held entitled to a sum of Rs. 3000/- as cost of the gun. However the claim for damages was rejected.

6. Not being satisfied with the judgment and order of the Trial Court the Appellant filed Civil Appeal No. 48 of 1976. The appeal has been partly allowed vide judgment and order of the Additional Civil Judge, Muzaffarnagar dated 22.07.1976. It is against the part of the judgment whereby the order directing the appellant to return the gun has been maintained the present second appeal has been filed.

7. On behalf of the appellant it has been contended that the judgment and order of the First Appellate Court is self contradictory. Counsel for the appellant has vehemently contended that since the auction of the seized property has been effected in accordance with Section 458, Cr.P.C. under orders of the District Magistrate and such order has not been set aside by any competent Court of law, the same has become final between the parties and no Civil Court can set aside the auction in terms of Section 458, Cr.P.C. The aforesaid aspect of the matter has completely been ignored by the Courts below. Any auction proceedings under the provisions of Cr.P.C., cannot be interfered in a Civil Suit. Counsel for the appellant

contended that merely because the Hon"ble High Court on 25.08.1971 had set aside the order of forfeiture of the gun on miscellaneous application filed by the plaintiff company, it will not mean that the auction proceedings taken u/s 458, Cr.P.C. Automatically stand nullified.

8. I have heard learned Counsel for the parties and have gone through the records of the present second appeal.

9. From the facts as they exist on record it is apparently clear that after the gun was seized and orders for sale of the same were issued. Such orders for sale of the property seized during criminal proceedings are referable to Section 458, Cr.P.C. Section 458(2) provides for an Appeal against an order of the Magistrate directing sale of the property. It is apparent from the records of this appeal that the order declaring the seizure to be illegal was made by this Court on 25.08.1971 when proceedings u/s 458, Cr.P.C. for sale of the gun had already taken place on 22.06.1970. It is, therefore, obligatory upon the plaintiff company to have got the order of sale passed u/s 458 Cr.P.C. set aside and then only any direction for the return of the gun could be given effect to. The plaintiff for reasons best known to it has not brought to the knowledge of the Court in his Criminal Misc. Application resulting in the order dated 25.08.1971, the factum of the order for sale passed u/s 458, Cr.P.C. and the actual sale which had taken place on 22.06.1970 i.e. much prior to the date of the order of the High Court dated 25.08.1971 setting aside the forfeiture.

10. The auction so effected cannot be reopened or set aside on a suit filed for return of the gun filed by the plaintiff. In the opinion of the Court unless the auction proceedings u/s 458 are set aside, no Civil Court has jurisdiction to direct return of the property sold u/s 458, Cr.P.C. Consequently the decree to, the extent it directs return of the auctioned property cannot be upheld. Accordingly the decree is hereby set aside. However remaining part of the decree for payment of cost of the gun by defendant No. 4 is maintained.

11. The appeal stands allowed accordingly.