

Present :

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin KHan

Criminal Misc. Case No. 8320 of 2022

In the matter of:

Md. Hafizur Rahman Khan @ Dhan Mia

.....Convict-petitioners.

-Versus-

The State.

..... Opposite party.

Mr. Nurul Islam, Advocate.

....For the Convict-petitioners.

Mr. S.M. Asraful Hoque, D.A.G. with

Ms. Fatema Rashid , A.A.G. with

Mr. Md. Shafiquzzaman (Rana), A.A.G. with

Mr. Md. Akbar Hossain, A.A.G.

..... For the State.

Heard on: 05.11.2023,07.11.2023 and

Judgment on: 09.11.2023.

Ashish Ranjan Das, J:

Rule under Section 561A of the Code of Criminal Procedure (for short the Code) was issued in the following terms :

“Let Rule be issued calling upon the opposite-party to show cause as to why the order dated 05.10.2021 passed by the Druto Bichar Tribunal No. 03, Dhaka in Druto Bichar Tribunal Case No. 12 of 2013 and Shajahanpur Police Station Case No. 31 dated 29.05.2012 corresponding to G.R. No. 35 of 2012 and in where the learned Tribunal passed the judgment and order dated

07.04.2014 convicting him under Sections 304 of the Penal Code, 1880 and sentencing him thereunder to suffer rigorous imprisonment for 10(ten) years and to pay fine of Tk. 50,000/- (fifty thousand) in default to suffer rigorous imprisonment for a period of 02(two) years more, should not be quashed and/or such other or further order or orders passed a to this court may seem fit and proper.”

Shot facts relevant for the purpose that could be gathered from the file may be summarized as under; The petitioner Md. Hafizur Rahman Khan and the deceased Mozzamal Hossain used to be brothers in law interse. They were maintaining a good relationship. However the relationship between the petitioner and his wife was bitter and as the wife's brother the deceased Mozzamal used to intervene in order to bring down tension. The date of occurrence on 29.05.2012 the petitioner and his wife were locked in a quarrel and the petitioner was intimidating his wife with a shot gun. In the juncture wife's brother the deceased appeared and in the bargain at on stage the petitioner fired a shot. As a result Mozzamal died. A regular case attracting section 302 of the Penal Code was set on motion. During investigation the police

officer seized the shot gun used in the killing and another pistol and both the licenses were also seized. In trial the petitioner was convicted and sentenced to suffer rigorous imprisonment for 10 years coupled with a fine under section 304 part II of the Penal Code by judgment dated 05.10.2021 passed by the Drutu Bicher Tribunal-3, Ex-Officio, Session Judge, Dhaka.

The petitioner preferred a Criminal Appeal and the learned Appellate court was phased to dismiss the appeal. The state preferred two separate appeals for enhancement of the sentence those were dismissed. However this revision was filed as the appellate court altered the conviction under Section 304 part II to Section 304 part I. The petitioner by the time served out the period of sentence.

Now one peculiarity of the case is that neither in trial nor in appeal the leaned court spelt out anything regarding the confiscation or non-confiscation of those two licensed fire arms. This petitioner moved the trial court with an application in order to get back those two fire arms with licenses.

However, the trial court by his order dated 07.04.2014 rejected the application. Hence is this criminal miscellaneous case.

We have heard detailed arguments advanced by the learned advocate for the petitioner and the opposition raised by the learned Deputy Attorney General.

As yet it remains not denied that by using the seized shot gun the petitioner committed a killing that was ultimately resolved as an offence under section 304 part I of the Penal Code and he has by the time served out the period of sentence. It also remains undenied that during investigation of the case both the shot gun and the pistol with licenses were seized. Neither the trial court nor the appellate court gave any hint as to what would happen to those two seized fire arms, whether those are confiscated or not.

So far as the shot gun is concerned it has been settled up to the appellate court that the killing was committed by using the shot gun and the conviction was concluded. Hence we are of the view that the question of returning the shot gun does not arise.

As regards the pistol has been seized in the same case of killing by the investigation officer. It has also not been denied that the weapon was not used in the commission of the offence or in any other offence. In that case the petitioner as accused could have got back the pistol as being not confiscated since it was not used the commission of any offence whatsoever.

Thus the petitioner shall get back the seized pistol in accordance with law. However whether he will be entitled to get a fresh license or renewal of the license should be in domain of the licensing authority, here the Deputy Commissioner.

With a findings the Rule is disposed of.

Communicate the judgment and order to the court below.

Send down the Lower Court Records.

Md. Riaz Uddin Khan,J

Md. Atikur Rahman, A.B.O.