

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25th March 2010

Decision on: 30th April 2010

W.P.(C) 876/2009

M/s. ANAND ARMOURY

..... Petitioner

Through: Mr. Jayant Bhushan, Sr. Advocate with
Mr. Atul Batra and Mr. Gautam Talukdar,
Advocates

versus

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondents

Through: Ms. Jyoti Singh with Mr. Ankur
Chhibber, Advocates

CORAM: JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

30.04.2010

1. The challenge in this writ petition is to an order dated 4th February 2009 passed by the Deputy Secretary of Home (General) of the Government of National Capital Territory of Delhi ('GNCTD') under Section 17 (3) of the Arms Act, 1959 ('Act') revoking the Arms & Ammunition Dealership licence in Form 11 with immediate effect and further directing, under Section 21 of the Act to deposit the arms and ammunition in his possession to the officer-in-charge of the nearest police station.

2. Petitioner No.1 is a partnership firm which is represented by its partner

Shri M.L. Anand. Petitioner Nos. 2 and 3 are Shri. M.L. Anand and Shri Vikas Anand, his son respectively. They are the two partners of Petitioner No. 1 firm. M/s. Anand Armoury was first issued an arms and ammunition dealership licence on 23rd December 1971 when it was a proprietary concern. In the year 1989, the partnership firm of Petitioner No.1 was constituted with Shri Vipin Anand and Shri Vikas Anand both sons of Shri M.L. Anand as the partners of the firm along with their father Shri M.L. Anand. A copy of the partnership deed dated 1st June 1989 has been enclosed with the writ petition. The licence of the Petitioner No. 1 firm was renewed from time to time. The licence was last renewed from 1st January 2002 till 31st December 2004.

3. Consequently, in December 2004, the Petitioner No.1 applied for renewal of the licence. However, the licencing branch refused to accept the renewal fees on the ground that the name of Shri Vipin Anand appeared in RC No. 12 (S)/2001 filed by the CBI as an accused. It is stated that prior to this no show cause notice was issued to Petitioner No. 1 and that no arrest was ever made in the case. The allegation in the FIR was that Shri Vipin Anand had been involved in illegally getting the arms licence of one Shri Govind Saran transferred from Jammu & Kashmir to Gurgaon.

4. It is stated that after coming to know of the fact on 30th May 2005 Shri Vipin Anand unconditionally retired from the firm and a new partnership deed was entered into between Shri M.L. Anand and Shri Vikas Anand. A copy of the dissolution deed dated 30th May 2005 and the deed of the reconstituted partnership firm of the same date have been enclosed.

5. By a letter dated 31st May 2005 Petitioner No. 1 informed the Deputy Commissioner of Police (Licencing) Delhi of the change in the constitution of the firm and requested for the deletion of the name of Shri Vipin Anand and the renewal of the licence of Petitioner No.1.

6. The request for renewal was forwarded by the DCP (Licencing) to the Secretary Home (General) Department of GNCTD on 21st June 2005. It is stated that the DCP (Licencing) relied upon the report of the ACP of Rajouri Garden and recommended conditional renewal of the licence of the Petitioner No. 1 firm. The condition proposed by the DCP (Licencing) was to the effect that in the event “ Mr. Vipin Anand, whose name has not been deleted from the Licence, so far, is found guilty by a court of law, the action will be taken on merits.” He recommended that the dealership licence as well as safe custody licence be renewed conditionally up to 2007.

7. However, on 23rd August 2006, the Commissioner of Police withdrew the earlier recommendation for renewal of the licence of Petitioner No. 1 firm. This was based on the decision of the meeting of the Screening Committee held on 23rd February 2006. A copy of the minutes of the meeting of the Screening Committee shows that there was no specific discussion as regards the case of Petitioner No.1. It was observed that in two cases, which presumably included the case of Petitioner No. 1, “no grounds were mentioned for renewal” and therefore, it was suggested that “they may be cancelled after following proper procedure, if not done earlier”.

8. On 27th August 2007, Petitioner No. 1 received a show cause notice dated 10th August 2007 under Section 15 (3) of the Act read with Rule 13 of the Arms & Ammunition Act asking it to show cause why renewal of the licence should not be denied. Petitioner No. 1 sent a reply on 3rd September 2007. The show cause notice referred to a charge sheet against Shri Vipin Anand filed by the CBI in the FIR RC No. 12(S)/2001 in May 2005. The precise charge against Shri Vipin Anand as extracted in the CBI's charge sheet reads as under:

“Vipin Anand charged Rs. 6500/- for getting the licence transferred to Delhi, signature of Gobind Saran Singh were obtained by Vipin Anand on an application, who kept the licence with him and that after about one month, Vipin Anand instead of getting the licence transferred to Delhi, got it registered in Sub-Divisional Magistrate office/Gurgaon with a new number 33/SDM/G/98 and that the false address of Gurgaon was given by Vipin Anand, himself. On being asked about registration of licence at Gurgaon Vipin Anand informed him that he had got registered this licence in Sub Divisional Magistrate Office, Gurgaon through Ved Prakash Gupta, Clerk, who was known to him. R.C.Poweria erstwhile Sub Divisional Magistrate, Gurgaon later revoked the entries in the registered without any authority.”

9. By the impugned order, the Respondent No. 2 declined to renew the licence of Petitioner No.1 and proceeded to revoke it.

10. It is submitted by the Petitioners that Shri Vipin Anand, even according to the allegations in the show cause notice, was acting in his individual

capacity and not in his capacity as a partner of the Petitioner No. 1 firm. Moreover, the firm was not named as an accused in the FIR. Only Shri Vipin Anand was arrayed as an accused in his individual capacity. The above allegations in the FIR and charge sheet were not even within the knowledge of Petitioner No. 1 firm or its other partners. There was no notice issued to even Shri Vipin Anand during the course of the investigation and, therefore, there was no opportunity to explain the version of Shri Vipin Anand. Petitioner No. 1 was not even aware of the pendency of any criminal case. It is submitted that the Screening Committee on whose recommendations the request for renewal of the arms licence of Petitioner No. 1 was rejected, did not actually discuss the details concerning Petitioner No. 1 firm. It simply made an observation that no grounds were mentioned for renewal, which was factually incorrect. Reliance is placed on the judgment of the Division Bench of the Karnataka High Court in *State of Karnataka v. G. Lakshman ILR 1987 Karnataka 2223* where it was held that the mere pendency of a criminal case against the arms licence holder would not provide sufficient justification for suspension/revocation of licence.

11. While reiterating the above submissions, Mr. Jayant Bhushan, learned Senior counsel for the Petitioner, placed reliance upon certain passages of **Halsbury's Laws of England** (page 39, Vol. 35, IV Edn.) and submitted that the partners of a firm would be liable for the wrongful acts of a partner "which are committed in the ordinary course of business as carried on by that particular firm (even if the transaction in question is not within the usual scope of similar businesses) or to secure an object which would be

within the ordinary scope of the partnership business, if attained by legitimate means”. It is submitted that the scope of business of Petitioner No. 1 firm extended only to the selling of arms as a legitimate business and renewal of the arms licences was not part of the business of Petitioner No. 1 firm. Relying on the judgment of *Daya Kishen Kaul v. Frank B. Pool AIR 1914 Lahore 51*, *Ghisulal v. Hazi Mohammed AIR 1981 Rajasthan 58* and *T.S.R. Abdul Rahim v. The Foreign Exchange Regulation Appellate Board 1982 Cri LJ (NOC) 213 (Madras)* it is submitted that the criminal liability of a partner of a firm cannot be straightaway extended to the firm.

12. Ms. Jyoti Singh, learned counsel appearing for the Respondents, on the other hand, submits that the fact of the involvement of Shri Vipin Anand as an accused in the aforementioned criminal case in which a charge sheet was filed by the CBI on 30th May 2005 was not in doubt. It is submitted that the incident took place in the year 2004, i.e., before the dissolution of the partnership. It is only after the filing of the FIR by the CBI that the partnership firm was dissolved. This was only done to prevent liability being attached to the partnership firm. In other words, it is submitted that the criminal liability does not cease upon the dissolution of the partnership firm. It is submitted that the conditional recommendation made by the DCP (Licencing) was withdrawn by the Commissioner of Police on 23rd August 2006 after it emerged that Shri Vipin Anand was prima facie guilty of the offence in RC No.12 (S)/2001. It is denied that the Screening Committee did not discuss the case of the Petitioner No. 1. It is submitted that an arms licence holder getting an arms licence transferred from one place to the other was not only unauthorised in law, but was a grave charge and that the

Respondents should not be required to renew the arms licence of the firm where one of its partners was named in a charge sheet for such a grave criminal offence. It is submitted that if the Petitioner's request were to be accepted it would amount to absolving the partnership firm of all criminal liability by the mere fact of its dissolution after the commission of the crime. It is submitted that this should not be permitted and a strict view should be taken in the matter.

13. It needs to be mentioned that during the pendency of the writ petition, the Respondents renewed the licence of the Petitioner No.1 firm till 4th February 2009, i.e., in the name of the reconstituted firm.

14. The question that arises in the present case is whether in the absence of Petitioner No.1 being named as an accused in the FIR referred to hereinbefore, can the fact that one of its partners is named as an accused, provide sufficient justification for non-renewal of the licence of Petitioner No. 1 firm? In other words, can the deeds of an individual partner, performed in his individual capacity, bind the firm and/or the other partners of the firm?

15. It is not the case of the Respondents that the Petitioner No. 1 firm itself was involved in the alleged illegal transaction that forms the subject matter of the FIR. The allegation is that Shri Gobind Saran Singh purchased one 12 bore SBBL gun and one .32 bore revolver from the Petitioner No. 1 firm. Thereafter, one Uma Gandhi got the weapons entered in her licence through one Devender Dhawan and, thereafter, he gave the licence to Shri Vipin

Anand for getting it transferred to Delhi. Therefore, the allegations clearly are only against Shri Vipin Anand and not the Petitioner No. 1 firm. It is perhaps for that reason that in the note prepared by the DCP (Licencing), it was suggested that the licence of the Petitioner No. 1 may be renewed conditionally up to the year 2007.

16. It is further apparent that when the Screening Committee met on 23rd February 2006, they discussed in some detail the facts concerning certain other cases the names of which were mentioned in the minutes. However, no mention by name was made of the Petitioner No. 1 firm. As regards two firms, which presumably included Petitioner No.1, their licences were asked to be cancelled on the ground that “no grounds were mentioned anywhere”. This does not appear to be factually correct considering that there was a fairly detailed note of the DCP (Licencing) concerning the application made by Petitioner No. 1 for the renewal of its licence.

17. The subsequent letter dated 23rd August 2006 by the Commissioner of Police stated as under:

“The perusal of chargesheet prepared by CBI revealed that the name of Shri Vipin Anand partner of M/s. Anand Armoury has been mentioned as one of the accused persons in case RC No.12(S) 2001 etc. in view of the same as well as in confirmation to the decision taken at the meeting held on 23.02.2006, the conditional recommendation in respect of M/s. Anand Armoury sent by the licensing branch vide letter mentioned above is hereby withdrawn. The licence of M/s. Anand Armoury, as such should not be renewed.”

18. Section 19 of the Indian Partnership Act, 1932 (PA) states that “the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm”, binds the firm. It further states that the “authority of a partner to bind the firm conferred by this section is called his ‘implied authority’.” Section 22 further states that “in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm”.

19. Section 26 which is relevant for the present case reads as under:

“26. Liability of the firm for wrongful acts of a partner

- Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner”.

20. The running theme of the above provisions is of the “ordinary course of business” of the firm. The above provisions are more or less consistent with the common law principles concerning implied authority of a partner of a firm. In **Halsbury’s Laws of England** (page 39, Vol. 35, IV Edn.) in para 47 it is stated that a guarantee signed by one partner in the firm’s name does not bind the other partners “unless it is in the regular line of business of the firm, or unless he has their express authority to give the guarantee”. Further, it is stated that, as a rule, a firm is not liable for the fraud of a partner.

21. There was no document brought on record by the Respondents and no document mentioned by the CBI in the charge sheet which shows that Vipin Anand used the name of the Petitioner No. 1 firm for commission of the acts for which he has been charged in the criminal case. It does not appear that he was, therefore, acting either with “implied authority” of the firm or with the knowledge of the other partners of the firm.

22. In *Daya Kishen Kaul v. Frank B. Pool* the Plaintiff sued the defendant on a document which purported to be a receipt in favour of the plaintiff, for a certain sum of money as an interest bearing deposit. It was not signed by the Defendant but by a person alleged to be the partner of the defendant in a business in which he was admittedly acting as the Manager. It was held that the person who signed the note was not a co-partner with the Defendant. The concern was in fact a proprietary one. It was held that there was no borrowing of the money on behalf of the firm “in the ordinary course of business”. Therefore, no liability accrued to the defendant.

23. In *Ghisulal v. Hazi Mohammed* the executant of the promissory note did not indicate therein that he was executing it as a partner for or on behalf of the firm. It was held by the Rajasthan High Court that “the firm’s name must be disclosed in some such a manner that upon fair interpretation of the promissory note it must appear that the firm was the real person liable on the pro note.”

24. In *T.S.R. Abdul Rahim v. The Foreign Exchange Regulation*

Appellate Board the accused was a partner of a firm dealing with
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rice hulling. He was charged individually under the provisions of the Foreign Exchange Regulation Act, 1947 whereas the firm was not. The question was whether the said accused was individually liable or could “hide himself behind the personality of partnership”. It was held that the accused “should be taken to be the one who is individually responsible for the transactions and not as a person acting on behalf of the partnership”. Therefore, no criminal liability could be attached to such partnership firm.

25. In view of the law as explained hereinbefore, this Court finds that the reason for non-renewal of the licence of Petitioner No. 1 is not legally tenable. In any event, the individual partner who is facing the criminal charge, is no longer a partner of the Petitioner No.1 firm as reconstituted. Even on the date when the charge sheet was filed, Shri Vipin Anand was arrayed as an accused only in his individual capacity. Admittedly, the licence of Petitioner No. 1 firm has been renewed up to 4th February 2009. The question, therefore, only arises with regard to the further renewal beyond 4th February 2009. As on that date the Petitioner No. 1 firm has only Petitioner Nos. 2 and 3 as its partners. As on that date, Shri Vipin Anand, who is facing the criminal charge was not a partner. Even as of today he is not a partner of Petitioner No.1 firm. Therefore, there should not be a difficulty in directing renewal of the licence of the Petitioner No.1 firm for a period beyond 4th February 2009.

26. Although reliance was placed by the learned Senior Counsel for the Petitioner extensively on the judgment of the Division Bench of Karnataka

High Court in *State of Karnataka v. G. Lakshman*, the Court finds the said
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decision not to be relevant. If Shri Vipin Anand had continued as a partner of Petitioner No. 1 firm and the question arose whether the renewal of the licence of the Petitioner No. 1 firm can be permitted as long as the criminal case is pending the aforementioned decision may have been relevant. This is because, in the above decision, the Respondent was a sole proprietor in whose name the licence had been issued. The Petitioner's two sons were later "permitted to be inducted in the business of the proprietor as joint proprietors". One of the grounds for non-renewal of licences was that "the Petitioner was involved in several criminal cases". It was noticed that under Section 17 (3) of the Act, the licencing authority could suspend or revoke a licence if it is satisfied that "holder of the licence" is "for any reason unfit for a licence under this Act". It was, therefore, held that in the phrase "reason to believe", the "belief should be the product of reason. No belief can be founded on reason, if the basic facts leading to the belief, cannot reasonably lead to the particular belief. If the facts relied upon by the authority from which, it has to arrive at a particular belief, cannot be relied upon at all because, the facts are irrelevant, or immaterial or so trivial that no reasonable man would take note of such facts, there is no escape from the conclusion that the belief is not founded on reason." Thereafter, the Karnataka High Court observed that the objects and reasons of the Act were to ensure that licence to possess arms was issued to a fit and suitable person. Therefore, the criminal charges must be "serious and genuine". It is held that the licencing authority should consider the nature of the charges, the stage of the criminal cases, if any, the extent of the investigations held, the ultimate order in case the trial was over, the proximity in point of time between the involvement in criminal cases and the time when renewal of

the licence is sought as also the relevancy of the charges to the fitness of the licensee to hold the licence to manufacture arms and ammunitions. In the above circumstances, it was held that the non-renewal of the licence of Petitioner No.1 was not justified. To reiterate, this Court is of the view that the aforementioned decision in *G.Lakshman* is not relevant to the present case particularly when Shri Vipin Anand was not acting on behalf of the firm but in his individual capacity and the Petitioner No.1 itself is not named as an accused in the criminal case.

27. For the aforementioned reasons, this Court sets aside the impugned order dated 4th February 2010 passed by Respondent No. 1 revoking the licence of Petitioner No.1. The necessary orders withdrawing the revocation and renewing the licence of Petitioner No. 1 from 4th February 2009 onwards till such period as deemed appropriate by the Respondents in accordance with the provisions of the Act will be passed within a period of four weeks. While renewing the licence, it will be open to the Respondents to make it conditional upon Shri Vipin Anand not being inducted into the Petitioner No. 1 firm as long as he is not discharged or acquitted in the criminal case arising from FIR No. RC-12(S)/2001.

28. The petition is accordingly allowed with costs of Rs. 5,000/- which should be paid by the Respondents to the Petitioner within a period of four weeks.

S. MURALIDHAR, J.

APRIL 30, 2010

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