

GAHC010011592022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./28/2022

BABU SHARMA
S/O LATE NANI GOPAL SARMA
R/O VILL- CHALANTAPARA
P.S. JOGIGHOPA
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. J ABBAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 16-02-2023

Heard Mr. S. Nawaz, learned counsel for the applicant. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This revision petition is filed under Sections 397 and 401 *read with* Section 482 of the Code of Criminal Procedure, 1973, challenging the order dated 22.12.2021, passed by the learned Judicial Magistrate First Class, North Salmara, Abhayapuri in Jogighopa P.S. Case No. 25/2018, registered under Sections 120-B/307/326/34 of the Indian Penal Code read with Sections 25(1-A)/27(2) of the Arms Act by rejecting the prayer of the petitioner seeking zimma of a 0.32 bore pistol, ammunitions and Licence No.70/2005, UIN No.041830023/0647/2015.

3. It is submitted by the learned counsel for the petitioner, Mr. Nawaz, that the said case was registered on the basis of the FIR dated 04.02.2018, lodged by one Sri Riju Hussain, registered under Sections 120-B/307/326/34 of the Indian Penal Code read with Sections 25(1-A)/27(2) of the Arms Act alleging that his brother was shot at by an unknown miscreant, thus the informant suspect the involvement of the petitioner in the alleged offence.

4. During the investigation, the IO seized the petitioner's 0.32 bore pistol, 8(eight) rounds of live ammunition along with Licence No. UIN 041830023/0647/2015 from the custody of the petitioner. On 13.05.2019, the petitioner filed a petition before the learned Judicial Magistrate First Class, North

Salmara, Abhayapuri seeking zimma of the seized said licence, so that the licence could be renewed. However, the said zimma petition was rejected.

5. Being aggrieved by the said order of rejection dated 13.05.2019, the petitioner approached the Court of the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri in Criminal Revision No. 02(2)/2019. Vide order dated 11.11.2021, the said learned Court observed that the zimma prayer should not have been rejected only on the ground that the offences were traible by the Court of Session and that the learned Judicial Magistrate First Class had neither called for a report from the IO nor perused the case diary and further, the learned Revisional Court to set aside the order dated 13.05.2019, and directed the petitioner to file a fresh petition seeking zimma of the pistol.

6. On 07.12.2021, the petitioner filed a fresh petition seeking zimma of the 0.32 bore pistol, the ammunitions and the licence in question. But, again vide order dated 22.12.2021, passed in GR Case No. 110/2018, the learned Judicial Magistrate First Class, North Salmara, Abhayapuri had rejected the zimma petition on the ground of the nature of allegations.

7. Therefore, Mr. Nawaz, learned counsel for the petitioner submitted that the both the learned Courts rejected the zimma petition without going into the merit of the matters and again on the ground of nature of offences alleged. The learned Judicial Magistrate First Class, North Salmara, Abhayapuri had clearly erred in law in rejecting the zimma prayer solely on the ground of severity of offences and most pertinently, ignored the provisions of Chapter XXXIV of the

Code of Criminal Procedure 1973, especially Sections 451 and 457, neither of which envisages rejection of a zimma prayer only because of the offences alleged are serious or are triable by the Court of Session.

8. The learned Judicial Magistrate First Class, North Salmara, Abhayapuri had erroneously interpreted the law on zimma. The severity of the offence has little relevance in deciding the zimma prayer in respect of a seized property unless the Act contains a disabling provision. So far as the Arms Act is concerned, the petitioner most humbly submits that Section 32 of the Arms Act provides for confiscation of the seized arms, ammunitions etc., but that is predicated on the conviction of the accused person. In the instant case, the charge-sheet has not yet been submitted. So there is no encumbrance in granting temporary custody of the pistol, the ammunitions and the licence to the petitioner.

9. The learned Judicial Magistrate First Class, North Salmara, Abhayapuri failed to appreciate the fact that the petitioner was issued a valid arms licence as well as permission to purchase the seized pistol by the District Magistrate. The Investigation Agency has the right to seize any weapon which he reasonably suspected to be involved in the commission of the alleged offences. But in the instant case, it has been almost 5(five) years since the pistol, ammunitions and licence have been seized. The IO had enough time and opportunity to inspect and examine the matter.

10. More so, the learned Judicial Magistrate First Class, North Salmara, Abhayapuri also did not make any attempt to ascertain whether the licence for

the pistol, ammunitions and licence are required for the purpose of further investigation of the case. Accordingly, the petitioner prayed for setting aside and quashing of the order dated 22.12.2021, passed by the learned Judicial Magistrate First Class, North Salmara, Abhayapuri and accordingly, prayed for a direction to the Officer-in-charge to give zimma of the seized pistol, ammunition and licence in connection with this case.

11. The learned counsel for the petitioner further submits that the arm which has been seized from the possession of the present petitioner was never used for the commission of any offence. Keeping the licence in the Police station will serve no purpose.

12. Accordingly the learned counsel for the petitioner has prayed for the zimma of the seized pistol and he is ready to abide by any conditions put upon him, if his seized pistol, ammunition and licence is given to him.

13. The grounds which are taken in the Criminal Revision petition are the good grounds and the petitioner genuinely believes that there is every possibility of allowing the revision petition.

14. In this context, Mr. K. K. Parasar, learned Additional Public Prosecutor has submitted that the case diary along with the report of the IO has already been received. During the investigation of the case, one pistol, eight rounds ammunition and one gun licence were seized from the possession of the petitioner namely, Babu Sarmah. Also one bullet was seized on being produced by Riju Hussain. The seized pistol and ammunitions were examined through

FSL. The accused Babu Sarmah, Ahidul Islam and Jahanuddin were arrested and forwarded to judicial custody. The accused Kishor Ray was also shown arrested in connection with this case.

15. The report submitted by the IO also reveals that the two other cases were registered in the name of the present petitioner i.e. Jogighopa P.S. Case No.93/03, registered under Section 143/448/427/325/365 of the IPC and Jogighopa P.S. Case No.20/08, registered under Section 147/148/149 / 341/342/326/ 307/506 of the IPC, where the case diary have been submitted vide Jogighopa P.S. C.S. No. 109, dated 29.11.06 and Jogighopa P.S. C.S. No.98, dated 26.10.08 respectively. The petitioner is alleged to have used the pistol in unlawful manner, and his zimma should be rejected, for the reason that he may misuse the pistol for his personal gain.

16. The report of the FSL is reflected below:-

1. Ex-A is a firearm under the Arms Act. Ex-A is a factory firearm and it is serviceable in its present condition.
2. Ex-B1 and Ex-B2 are magazine housings for 7.65 X 17 mm cartridges and they can be fitted to Ex-A.
3. Ex-C is part of ammunition. Ex-C is not of the same caliber as Ex-A. Therefore, Ex-C was not fired through Ex-A.
4. Ex-D are ammunition and are live cartridges. Ex-D can be fired through Ex-A.

17. Further, it is submitted by the learned Additional Public Prosecutor as per the report submitted by the IO, the present accused petitioner may use the pistol in unlawful manner, if the zimma of the same is given him. And also there is possibility of misuse of pistol for his personal gain, and for which the IO has prayed not to give zimma of the seized pistol, ammunition and licence to the present petitioner.

18. In this regard, the learned counsel for the petitioner has submitted that the petitioner has purchased the pistol legally and also obtained the licence and at the same time, it is seen from the report of the FSL that no offence has been committed by using the said pistol, which has been seized in connection with this case. Accordingly, he prays for zimma of the said pistol and the petitioner is ready to abide all the terms and conditions imposed to him, if the temporary custody of the pistol, ammunitions and the licence is given to the petitioner.

19. After hearing the submission made by the learned Advocates of both sides as well as perusing the case diary and statement of the witnesses recorded by the I.O., it is seen that it is a serious offence and it cannot be denied that the petitioner is involved in similar two other cases including kidnapping, committing grievous hurt and also there is allegation attempt to commit murder etc. The IO has raised objection in granting zimma of the seized pistol, ammunition and the licence of the petitioner.

20. So, considering the nature and gravity of the offence, as well as the

involvement of the present petitioner in similar kind of offences, I find that possession of arms by the petitioner may possess threat to the general public at large. Thus, the plea of the IO for any misuse of the arm cannot be outrightly rejected. Further, the Case diary reveals that the investigation is almost completed and the IO is ready to submit report in Final form. Accordingly, I find that it is not a fit and appropriate case to grant zimma to the present petitioner at this stage and accordingly, the same stands rejected.

21. In view of above, this Criminal Revision Petition stands disposed off.

22. Case Diary be returned.

JUDGE

Comparing Assistant