

Court No. - 5

Case :- WRIT - C No. - 62953 of 2006

Petitioner :- Ajay Kumar Gupta

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Umesh Chandra Mishra, Ashok Trivedi, Manoj Mishra, Sanjeev Kumar Trivedi, Suhsil Kumar Dubey

Counsel for Respondent :- C.S.C., Manoj Mishra

Hon'ble Piyush Agrawal, J.

Heard Shri Ashok Trivedi, learned counsel for the petitioner and learned ACSC for the State - respondents.

The instant writ petition has been filed challenging the orders dated 29.03.2006 passed by the District Magistrate, Kannauj cancelling the firearm licence of the petitioner and 17.10.2006 passed by the Commissioner, Kanpur Division, Kanpur dismissing the appeal of the petitioner.

Learned counsel for the petitioner submits that the petitioner was granted firearm licence for rifle and on the basis of the report dated 30.07.2005 submitted the Superintendent of Police, Kannauj, the petitioner's firearm licence has been cancelled vide impugned order dated 29.03.2006, against which the petitioner preferred appeal, which has also been dismissed vide impugned order dated 17.10.2006.

Learned counsel for the petitioner submits that the firearm licence of the petitioner was cancelled on the ground of involvement of the petitioner in two criminal cases, being Case Crime No. 59/2005 under sections 147, 148, 452 IPC and Case Crime No. 158/2006 under sections 406 & 504 IPC, out of which in Case Crime No. 59/2005, the petitioner has already been acquitted and so far as Case Crime No. 158/2005 is concerned, a compromise has been entered between the parties, which has been stated in paragraph no. 22 of the writ petition. He further submits that the said fact has not been disputed by the State in the counter affidavit while replying to the said paragraph (i.e., in paragraph no. 13 of the counter affidavit). He further submits that the petitioner has not violated the provisions of section 17(3) of the Arms Act, 1959 and therefore, the impugned orders are bad in law. He further submits that even assuming without admitting that the criminal case is pending, the firearm licence cannot be cancelled or suspended. In support of his submissions, he has placed reliance on the

judgement of this Court in **Vishram Yadav Vs. Commissioner Devi Patan Mandal Gonda & Another** [2016 (9) ADJ 450 (LB)]. He prays for allowing the writ petition.

Per contra, learned ACSC supports the impugned orders and submits that the firearm licence of the petitioner has been cancelled in public interest as per the provisions of section 17(3) (b) of the Arms Act.

After hearing the learned counsel for the parties, the Court has perused the records.

The perusal of the record shows that the proceedings against the petitioner have been initiated on the basis of criminal cases. In the rejoinder affidavit, order dated 28.01.2009 has been brought on record, in which the petitioner has been acquitted in Case Crime No. 59/2005. So far as Case Crime No. 158/2006 under sections 406 & 504 IPC is concerned, a specific pleading has been made in paragraph no. 22 of the writ petition that compromise has been entered between the parties, which fact has not been denied by the State in its counter affidavit. Further, this Court on various occasions, has taken the view that mere pendency of the criminal case will not be a ground to cancel or suspend the firearm licence.

In the case of **Vishram Yadav** (supra), this Court has held as under:-

"..... It is well settled in law that mere pendency of criminal case or apprehension of abuse of arm is not sufficient grounds for passing the order of suspension or revocation of license under Section 17 (3) of the Act. Here, as averred above, the petitioner has been acquitted in the said criminal case. In the backdrop of the aforesaid facts, the order passed by the Appellate Authority cannot be legally sustained."

In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the case of **Vishram Yadav** (supra), the orders dated 29.03.2006 passed by the District Magistrate, Kannauj and 17.10.2006 passed by the Commissioner, Kanpur Division, Kanpur cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

Order Date :- 24.11.2023
Amit Mishra