

Court No. - 52

Case :- WRIT - C No. - 21050 of 2017

Petitioner :- Dinesh Kumar Yadav @ Pappu

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Deo Dayal, Arvind Kumar Goswami

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Deo Dayal, learned Counsel for the petitioner and Sri Dhananjay Singh, learned Standing Counsel for State-respondents.

2. Present petition has been filed challenging the order dated 24.03.2017 passed by Commissioner, Varanasi Division, Varanasi i.e. respondent no.2 in Appeal No.C-201514000001038 of 2015 (Dinesh Kumar Yadav Vs. State of U.P.) and order dated 26.05.2015 passed by District Magistrate, Varanasi i.e. respondent no.3 cancelling the fire arm license of the petitioner under Section 17(3)(b) of the Arms Act, 1959.

3. It is the case of petitioner that he was having Arm License No.6503 of Double Barrel Gun and Arm License No.6642 of Pistol of 32 Bore, on the complaint made by one Rajesh Kumar Jaiswal, an FIR was lodged against petitioner being Case Crime No.428 of 2006, under Section 323, 504 and 506 IPC and Section 10, 12, 22 and 23 of U.P. Regulation of Money Lending Act stating therein that petitioner had threatened several persons on the basis of his firearm license. After lodging of the said FIR, petitioner deposited his both the firearms with dealer. On the basis of police report dated 13.06.2007, respondent no.3 vide order dated 20.09.2007, suspended firearm license of petitioner till the final outcome of the aforesaid case. Petitioner was acquitted in the said case vide order dated 22.01.2010 passed by ACJM, Court No.3, Varanasi. When petitioner was acquitted, he moved an application along with acquittal order before respondent no.3 for revocation of his firearm license and the same was dismissed vide order dated 26.05.2015. Being aggrieved with the same, petitioner preferred an appeal before respondent no.2 which was also dismissed vide order dated 24.03.2017 which impugned the present petition.

4. Learned counsel for petitioner submitted that petitioner was acquitted in Case Crime No.428 of 2006 by order dated 22.01.2010 passed by ACJM, Court No.3, Varanasi, since firearm license of petitioner was suspended till the final outcome of the

said case and when he was acquitted, a copy of the said acquittal order was filed by petitioner before respondent no.3 for revocation of suspension of his firearm license but without considering the acquittal order dated 22.01.2010, respondent no.3 rejected his application on the ground of surmises and conjecture. Learned counsel for petitioner further drawn the attention of the Court towards the provisions of Section 17 (3) and 17 (7) of the Arms Act, 1959 and submitted that as per Section 17(3) of the Arms Act, no ground exists against petitioner for cancellation of arms license, once he has been acquitted.

5. Per contra, learned Standing Counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by petitioner on the ground that petitioner is a man of criminal nature and keeping arm license will have danger to the public peace and tranquility and as such the order passed by the licensing authority cancelling the license was in accordance with law.

6. From perusal of records, this Court finds that only one criminal case was lodged against petitioner being Case Crime No.428 of 2006, under Section 323, 504 and 506 IPC and Section 10, 12, 22 and 23 of U.P. Regulation of Money Lending Act and on the report submitted by the authorities concerned, arms license was suspended by the District Magistrate, Varanasi. Thereafter, in the said criminal case, petitioner was acquitted by the judgment and order dated 22.01.2010 passed by ACJM, Court No.3, Varanasi. The Licensing Authority and Appellate Court did not consider this fact that petitioner was already acquitted by the trial court and no adverse finding was recorded by the court, therefore, the orders rejecting the application and appeal preferred by petitioner were passed without application of mind.

7. It is not out of place to mention here that as per proviso of Section 17(7) of the Arms Act, 1959 which provides that if the conviction is set aside in appeal or otherwise the suspension or revocation shall become void. It is necessary to quote Sections 17(3) and 17(7) of the Arms Act, 1959 herein as under:-

"Section 17(3)- The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a license-

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or

on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence."

"Section 17(7)- A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void."

8. In the facts of the present case, this Court is of the considered opinion that none of the ground mentioned in section 17(3) of the Arms Act 1959, is applicable in the petitioner case. The petitioner was involved in only one criminal case and was finally acquitted by order dated 22.01.2010 passed by ACJM, Court No.3, Varanasi, further as provided under section 17(7) of the Arms Act, if conviction is set aside on appeal or otherwise, the suspension or revocation shall become void, therefore in that case too also petitioner is entitled for restoration of his fire arm licence by the Authority concerned.

9. This Court in the case of **Rajendra Deo Pandey Vs. State of U.P. And others, reported in 2012 (4) ADJ 716** was pleased to held that merely due to pendency of criminal case or after acquittal in the criminal case, arms licence cannot be cancelled, the same view was followed in the case of **Rajendra Pandit Vs. State of U.P. And others, 2012 (10) ADJ 435**. It is relevant to mention that in the above referred case, the acquittal order was passed in three cases and in the fourth case, a final report was submitted by the police, even though, the licence was cancelled. The High Court finally allowed the writ petition and the District Magistrate was directed to re-issue the arms licence to the petitioner.

10. In this connection it will be useful to refer to the case of **Ram Bodh Singh v. State of U.P. & others, 1985 (11) Allahabad Law Reports, 114**, in which it has been held that once petitioner was acquitted those cases could not furnish material for cancellation of his licence. Therefore, on the date on which the Commissioner passed his order, it cannot be said that the cancellation of licence was in the public interest and this fact could not be substantiated by the State."

11. This Court after considering the arguments advanced by the learned counsel for the parties and from perusal of record and considering the case laws on the issue involved observed here that

in the present case the petitioner was involved in sole criminal case and has been acquitted by the judgment and order dated 22.01.2010 passed by ACJM, Court No.3, Varanasi in Case Crime No.428 of 2006 and as per the provision contained under section 17(7) of the Arms Act, 1959, if the conviction is set aside in appeal or otherwise the suspension or revocation shall become void, therefore the arm licence has to be restored considering the provisions contained under Sections 17(3) and 17(7) of the Arms Act, 1959. The firearm licence of the petitioner could not have been cancelled in public interest as has been done in the present case, no incident of breach of security of the public peace or public safety at the behest of the petitioner has been pointed out.

12. In view of the well-settled legal proposition and the relevant case law referred above and the provisions contained under Sections 17(3) and 17(7) of the Arms Act, 1959 and going through the entire facts, this Court is of the view that the impugned order dated 24.03.2017 passed by Commissioner, Varanasi Division, Varanasi i.e. respondent no.2 and order dated 26.05.2015 passed by District Magistrate, Varanasi i.e. respondent no.3 are not sustainable in the eyes of law, therefore both the orders are hereby quashed.

13. The matter is remitted back to the District Magistrate, Varanasi i.e. respondent No.3 to pass a reasoned and speaking order afresh, for restoring the arms licence of the petitioner in accordance with law, preferably within a period of three months from the date of production of a certified copy of this order before him and communicate the same to the petitioner forthwith.

14. The writ petition is **allowed** accordingly.

Order Date :- 2.11.2023

Vivek Kr.