

Court No. - 5

Case :- WRIT - C No. - 1000601 of 2010

Petitioner :- Devi Prasad

Respondent :- Commissioner Devi Patan Mandal Gonda And Another

Counsel for Petitioner :- Vivek Kumar Pandey

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - C No. - 1000603 of 2010

Petitioner :- Dev Prasad

Respondent :- Commissioner Devi Patan Gonda And Another

Counsel for Petitioner :- Vivek Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard.

2. Learned counsel for the petitioner contends that the issue involved in WRIT - C No. - 1000603 of 2010 in re: Dev Prasad Vs. Commissioner Devi Patan Gonda And Another is same. As such, the Court proceeds to hear both the writ petitions together. For the sake of convenience, the facts of WRIT - C No. - 1000601 of 2010 are being taken.

3. The instant petition has been filed challenging the order dated 28.08.2008, a copy of which is Annexure No. 2 to the petition, whereby the arms license of the petitioner has been cancelled. Also under challenge is the order dated 13.01.2010, a copy of which is Annexure No. 1 to the petition, whereby the appeal filed by the petitioner against the order of cancellation of arms license dated 28.08.2008 has been rejected. Further prayer is for a writ of mandamus commanding the respondents to restore the petitioner's arms license.

4. Contention of learned counsel for the petitioner is that after due notice, the District Magistrate, vide order dated 28.08.2008, cancelled the arms license of the petitioner on the ground of pendency of a criminal case. He contends that an appeal filed against the same has also been rejected. He places reliance on the judgment and order passed by this Court in the **Misc. Single No. 26600 of 2016 in re: Mukesh Yadav Vs. State of U.P. Thru Prin Secy Secondary Home Lko & Ors** decided on **06.02.2019**. His contention is that mere pendency of the criminal case cannot be a ground for cancellation of

the arms license.

5. On the other hand, learned Standing Counsel, on the basis of averments made in counter affidavit, argues that on account of pendency of criminal case, it was not found feasible that arms license granted to the petitioner should be continued as such there is no error in the order of cancellation of arms license of the petitioner.

6. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

7. The sole controversy which is involved in the present petition is as to whether the licensing authority could cancel the arms license of the petitioner on the ground of pendency of the criminal case by observing that there is every possibility and probability of breach of peace and tranquility.

8. The issue in this regard is no longer res-intergra having been settled by judgment of this Court in the case of **Mukesh Yadav (supra), Pramod Kumar Vs. State of U.P** reported in **2010 (5) ADJ 594** as well as in the case of **Mukesh Kumar Yadav Vs. Commissioner, Lucknow Division, Lucknow** reported in **2017 (35) LCD 2017**.

9. For the sake of convenience, the relevant observations in the case of **Pramod Kumar (supra)** are reproduced as under:-

"8. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Section 17 of the Arms Act has been considered by a Division Bench of this Court in Sheo Prasad Misra Vs. District Magistrate Basti and others, 1979 (16)ACC 6 (sum), wherein the Division Bench relied upon an earlier decision in Mast Uddin Vs. Commissioner, Allahabad, 1972 ALJ 573. In both the aforesaid cases it has been held that mere involvement in a criminal case cannot in any way effect the public security or public interest. In view of this proposition of law the order cancelling or revoking the licence of the petitioner on the aforesaid ground of involvement and pendency of a criminal case is not tenable.

9. In Full Bench Decision of this Court rendered in Chhanga Prasad Sahu Vs. State of Uttar Pradesh, 1984(10) ALR 223 and Kailash Nath and others Vs. State of U.P. and others, 1985 (22) ACC 353 and in the case of Rana Pratap Singh Vs. State of U.P. 1994 JIC 72 (All); 1995 (Supp) ACC 235, it has been held that mere pendency of a criminal case (s) is no ground for cancellation of arms licence. The effect of the aforesaid Full Bench decisions was also considered in Sadri Ram Vs. District Magistrate, Azamgarh and others, 1998 (3) AWC 2102: 1998

10. This court in the case of Harprasad (*supra*) held as hereunder:

" involvement and pendency of a case crime is no ground for cancellation of fire-arm licence. It is settled law that after acquittal the very basis for cancellation of the arm licence stands vitiated. In this regard reference of the decision rendered in Lalji Vs. Commissioner, Kanpur and another, 1999 (4) AWC 2952, has been made."

11. Thus in view of the admitted facts and the settled legal position that a fire arm licence can not be cancelled on the ground of mere involvement of licensee in a criminal case, the impugned orders cannot be sustained. Even otherwise the petitioner has been acquitted in the criminal case in which he was involved and hence there is no justification for the continuance of the cancellation of the petitioner's fire arm licence."

Likewise, the relevant observations in the case of Mukesh Kumar Yadav (*supra*) are reproduced as under:-

"10. The said section has come up for judicial scrutiny in the case of C.P. Sahu Vs. State, 1984 AWC 145; Kailashnath Vs. State of U.P. and another, 1985 AWC 493; Balram Singh Vs. State of U.P. and others, 1988 AWC 14814; Rana Pratap Singh Vs. State of U.P., 1995 ACJ 200 and as per the judicial provocation given, there on the following points:-

(a) the licensing authority has no power to suspend the arms licence pending enquiry into its cancellation/suspension nor has it the power to suspend the licence for indefinite period;

(b) licensing authority has the power to suspend for specified period a fire-arm licence on being satisfied as to existence of all or any of the conditions visualised by clauses (a) to (e) of sub-section (3) of Section 17 of the Act sans any prior opportunity of hearing being given to the licence holder but such order of suspension shall not attain finality until the aggrieved party has been heard and his objections, if any, adjudicated. In other words, suspension of arms licence for specified period or its revocation under Section 17(3) of the Act, if ordered without affording opportunity of hearing, would endure in suspended animation until the aggrieved party has been heard by the licensing authority and his objections, if any, are adjudicated:

(c) the licensing authority can also for the furtherance of the immediate remedial actions, exercise in facts and circumstances of a given case, an incidental power of directing the licence holder to surrender his licence until objections have been decided ; and

(d) suspension under Section 17(3) of the Act must be for definite period to be specified in the order by the licensing authority.

11. Further, this Court in the case of Sahab Singh Vs. Commissioner Agra Region, Agra and others 2006 (24) LCD 374, in paragraph No. 3 held as under:-

"The submission of the petitioner is that merely because of pendency of a criminal case, the arms licence of the petitioner cannot be cancelled. in support of the said submission, learned counsel for the petitioner has placed reliance on two decisions of this Court in the case of Hausla Prasad Tiwari v. State of U.P. and Ishwar @ Bhuri v. State of U.P. . It has further been submitted that in view of the Full Bench decision of this Court in the cases of Balaram Singh v. State of U.P. and Ors. Kailash Nath v. State of U.P. 1985 A.W.C. 493 as well as the Division Bench decision of this Court in the case of Sadri Ram v. District Magistrate, Azamgarh and Ors., the arms licence of the petitioner cannot be placed under suspension pending enquiry."

12. From the perusal of the Section 17 (3) (b) of the Arms Act, the position which emerges out is that arms licence of a person can be cancelled, if licensing authority is satisfied that it was necessary for the security of the public peace or for the public safety.

13. In Thakur Prasad Vs. State of U.P. and others reported in [2013 (31) LCD 1460], this court propounded that "Public Peace" or "Public Safety" do not mean ordinary disturbance of law and order, but the public safety means safety of the public at large and not safety of few persons only. Relevant paras 9, 10 and 11 of the said case read as under:

"9. Further, while passing the impugned order also the licensing authority has not given any adequate finding that if petitioner holds the arms license then the same shall be against the public peace or public safety.

"10. Public peace" or "public safety" do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17(3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case in view of the judgment given by this Court in the case of Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998(16) LCD 905], wherein it has been held that license can not be suspended or revoked on the ground of public interest (Jan-hit) merely on the registration of an F.I.R. and pending of a criminal case."

14. In the present case, no finding has been given that in what manner if the petitioner is allowed to keep his arms licence, the same is

against a breach of public peace and public safety. Further as per settled law, mere involvement in a criminal case without any finding that if the petitioner is allowed to keep his arms, then it shall be detrimental to public peace and tranquility cannot be a ground for cancellation of arms licence."

10. When the facts of the instant case are tested at the touchstone of law laid down by this Court in the case of **Mukesh Yadav (supra)** it emerges that the District Magistrate has cancelled the arms license of the petitioner vide order dated 28.08.2008 solely on the ground of pendency of the criminal case.

11. As already indicated by this Court in the case of **Mukesh Yadav (supra)** mere pendency of a criminal case cannot be considered to be a ground for cancellation of the arms license. This aspect of the matter was also not considered by the appellate authority while rejecting the appeal of the petitioner.

12. Accordingly, keeping in view the aforesaid discussion, the writ petition is allowed. The impugned orders dated 13.01.2010 and 28.08.2008, copies of which are Annexure Nos. 1 and 2 respectively to the petition, are quashed and set aside.

13. Consequences to follow.

Order Date :- 5.1.2024

Mohit Singh/-