

Court No. - 33

Case :- WRIT - C No. - 23780 of 2022

Petitioner :- Azad

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Nawal Kishor Mishra,Rahul Misra

Counsel for Respondent :- C.S.C.

Hon'ble Vikram D. Chauhan,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. It is submitted by learned counsel for the petitioner that the petitioner was arms licence holder and his arms licence was cancelled by order dated 5.10.2020 passed by the District Magistrate, Shamli. Against which the petitioner has preferred an appeal before respondent no.2. The appeal filed by the petitioner was also rejected by respondent no.2 by order dated 24.12.2020. The arms licence has been cancelled on the basis of a report dated 23.7.2020, which was submitted by the Station House Officer concerned through Superintendent of Police to the District Magistrate, which is the licencing authority. The cancellation of the arms licence of the petitioner on the basis of the report of Superintendent of Police dated 24.7.2020, which is at page 30 to the writ petition is wholly untenable under law.

3. It is further submitted by learned counsel for the petitioner that it is a settled law that the cancellation of the arms licence solely on the ground of pendency of criminal case cannot be sustainable under law. In this respect, learned counsel for the petitioner has relied upon a judgment of this Court passed in the case of Amar Singh Vs. State of U.P. and others reported in 2022 (5) ADJ 430 to submit that there was no material circumstances before the District Magistrate concerned to have recorded a finding that the petitioner was a threat to public peace and public safety. The first information report was lodged against the petitioner under Sections 147, 149, 323, 325, 504, 427, 188, 269, 271 I.P.C.

4. Learned counsel for the petitioner has drawn attention of this Court to the first information report which is filed at page 23 to the writ petition to submit that in the first information report there is no allegation of use of firearm. Although, the petitioner had

disputed the aforesaid facts and have stated that the first information report has been lodged in a mala fide manner in order to falsely implicate the petitioner. However, he submits that even otherwise the first information report did not contain any allegation of use of firearm or misuse of the weapon. There was no material circumstances before the District Magistrate to demonstrate that the petitioner was a threat to public peace and public safety.

5. Learned Standing Counsel has opposed the writ petition and submits that the arms licence of the petitioner has been cancelled on the ground that Case Crime No.350 of 2020 under Sections 147, 149, 323, 325, 504, 427, 188, 269, 271 I.P.C was registered against the petitioner. On the basis of the criminal case in which the petitioner has used force and has assaulted the victim at his restaurant as a result of the same, the first information report has been lodged.

6. On a query being made to learned Standing Counsel as to what was the facts and circumstances which have resulted in the cancellation of arms licence of the petitioner on the ground of likelihood of disturbance of public peace and safety, learned Standing Counsel submits that as per the report of the Superintendent of Police, it is the criminal case pending against the petitioner which has resulted in the cancellation of the arms licence.

7. It is to be seen that the arms licence of the petitioner can be revoked by the licensing authority in accordance with Section 17(3) of the Arms Act, 1959, which is quoted hereunder:-

"The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence:

(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."

8. In the present case, the licensing authority has recorded a finding that there would be disturbance of public peace and safety. The aforesaid finding has been recorded on the basis that the petitioner may misuse the arms licence. The order of the licensing authority cancelling the arms licence is based on the report of the Superintendent of Police dated 24.7.2020. Although, details of the criminal case pending against the petitioner have been stated. However, only on the basis of presumption it has been stated that the petitioner may misuse the arms licence.

9. It is further to be seen that the power under Section 17(3)(b) is required to be initiated for revoking the arms licence in the necessity of the security of the public peace and public safety. In the present case, no such material circumstances have been shown from the record by the learned Standing Counsel, which has resulted in the recording of the finding that the petitioner is a threat to the security of public peace and safety and once there is no material except that the pendency of the criminal case in which use of the firearm has not been alleged by the prosecution, then it cannot be construed that the petitioner is a threat to the public peace and public safety. More particularly, when the dispute as per the first information report is of private nature between two individuals. Neither in the first information report nor any material has been shown by learned Standing Counsel which could be a determinative factor for holding that the security of the public peace and public safety is a threat at the behest of the petitioner.

10. Accordingly, the finding recorded only with respect to the petitioner being a threat to public peace and public safety is without any foundation. In so far as the pendency of the criminal case is concerned, it is not in dispute between learned counsel for the parties that mere pendency of the criminal cases would not be a ground for cancellation of arms licence. More particularly, when the arms licence is not alleged to have been used in the dispute arising out of first information report. There is a presumption of innocence till a person is convicted as such at this stage no such finding can be recorded.

11. In view of the aforesaid, the writ petition is allowed. The order dated 5.10.2020 passed by respondent no.3 and order dated 24.12.2020 passed by respondent no.2 is hereby set aside. The firearm licence of the petitioner is restored. At the time of renewal of the arms licence, it would be open for the respondent authorities

to examine the conduct of the petitioner after the cancellation order dated 5.10.2020 and thereafter, decide whether the renewal is required to be granted or not.

Order Date :- 6.1.2025

Bhaskar