Court No. - 33

Case :- WRIT - C No. - 34734 of 2022

Petitioner :- Sushil Kumar Mishra
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Yagyavalk Pandey
Counsel for Respondent :- C.S.C.

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondent-State.

2. By means of present petition, petitioner is seeking for quashing of the order dated 07.09.2021 passed by the respondent no.3-District Magistrate, Kaushambi, in Case No. 00169 of 2021, Computerized Case No. D2021024200000169, under Section 17(3) of the Arms Act and order dated 22.07.2022 passed by the respondent no.2-namely Commissioner Prayagraj Division, Prayagraj, in Case No.876 of 2021, Computerized Case No.C202102000000876 under Section 18 Arms Act. Further prayer is made to direct the respondent concerned to restore the Gun No.425-96 and bearing 519 S.B.B.L in favour of the petitioner.

3. Learned counsel for the petitioner submits that only ground for cancellation of armed Gun No.425-96 and bearing 519 S.B.B.L is that one criminal case has been registered against the petitioner namely Case Crime No.119 of 2018, under Sections 286, 504 506 I.P.C. and 27, 3 of Arms Act. is pending against the petitioner.

4. It is argued that law is well settled that mere pendency of the criminal case or with the apprehension that the petitioner may be involved in future in any other criminal case cannot be a ground for cancellation of the firearms license under the Arms Act, 1959.

5. It is argued by the learned counsel for the petitioner that as on date, there is no material available against the petitioner except one criminal case pending, on account of which firearm license was cancelled, hence the impugned orders are liable to be set aside.

6. On the basis of the aforesaid, it is argued by learned counsel for the petitioner that in view of the settled proposition of law as has been held by this Court in the case of Suresh Singh Yadav (Writ C No.19871 of 2021), decided on 14.11.2022, the orders passed by the respondent Nos.2 and 3 are liable to be set aside.

7. It is further argued that there is no material on record to show that armed license granted to the petitioner has been misused or there is any danger to public safety except the allegations that criminal case is pending against the petitioner. It is further argued that license can only be cancelled only to reasons assigned to Section (3) of Section 17 of the Arms Act, 1959.

8. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgments passed by this Court in the cases of ***Ram Murti Madhukar vs. District Magistrate, Sitapur [1998 (16) LCD-905], Ram Karpal Singh vs. Commissioner, Devi Patan Mandal, Gonda and Ors. [2006 (24) LCD 114] and Ram Prasad vs. Commissioner and Ors.*** decided on 07.02.2020 in Writ-C No. 56378 of 2006, wherein it has been held that mere pendency of criminal case or apprehension of misuse of arms are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 of the Act.

9. Per contra learned Standing Counsel submits that since the petitioner is having three criminal cases registered against him, public peace and safety are in danger, therefore, the order has rightly been passed cancelling the fire arms license of the petitioner.

10. Heard learned counsel for the parties and perused the record.

11. In the case of ***Ram Murti Madhukar (supra)***, this Court has held in paragraph no. 8 as under :-

"(8) It is also well settled in law that mere pendency of criminal case or apprehension of abuse of Arms Act, are not sufficient ground for passing of the order of suspension or revocation of licence under Section 17 of the Act. A reference in this regard may be made to the decisions of this Court in Ganesh Chandra Bhatt v. D. M. Almora, AIR 1993 All 291"

12. In the case of ***Ram Karpal Singh (supra)***, this Court has held as following in paragraph nos. 6 and 7, which are being reproduced hereunder:-

"6, Learned counsel for the petitioner had relied upon the two judgments of this Court reported in 2002 ACC; Habib v. State of U.P.

7. Para 3 of the said judgment is reproduced as under:

"Para 3: 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 license under Arrns Act, has been deal with by a Division Bench in this Court reported in Sheo Prasad Misra v. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Mai Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot be in any way affect the public security or public interest and the order canceling or revoking the .licence of fire arm has been set aside. The present impugned order also suffers from the same infirmity as was pointed out by the Division Bench in the above mentioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserve to be quashed and are hereby quashed."

13. This Court in the case of ***Ram Prasad (supra)*** has held as under. Relevant paragraphs of the said judgments i.e. 16,19,22,23,24,25,28,32 and 36 are being quoted hereunder:-

"16. The matter which requires consideration is, whether on the ground of pendency of the criminal case the petitioner's fire arm licence could be cancelled and his appeal could be dismissed, notwithstanding his acquittal on 17.1.2003. It also requires consideration if the ground in the impugned orders that if the petitioner's fire arm licence remain with the petitioner, it would not be in the public interest and public security, are justified for cancellation and based on substantial material."

19. In Masiuddin Vs. Commissioner, Allahabad Division, Allahabad and another reported in 1972 A.L.J. 573 this Court held in paragraph Nos. 4 and 7 as under:

"4. After a license is granted, the right to hold the license and possess a gun is a valuable individual right in a free country. The security of public peace and public safety is a valuable social interest. Section 17 shows that Parliament had decided that neither of the two valuable interests should unduly impinge on the other Section 17 seeks to establish a fair equilibrium between the two contending interests. It says: Hear the licensee first; and then cancel the license "if necessary for the security of the public peace or for public safety". True, there is no express provision for hearing. But the nature of the right affected, the language of Sec. 17, the grounds for cancellation, the requirement of a reasoned order and the right of appeal plainly implicate a fair hearing procedure. Jai Narain Rai v. District Magistrate, Azamgarh. While cancelling a licence, the District Magistrate acts as a quasi-judicial authority.

15. A license may be cancelled, inter alia on the ground that it is "necessary for the security of the public peace or for public safety" to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the license. The mere existence of enmity between a licensee and another person would not establish the "necessary' connection with security of public peace or public safety. There should be something more than mere enmity. There should be some evidence of the provocative utterances of the licensee or of his suspicious movements or of his criminal designs and conspiracy in reinforcement of the evidence of enmity. It is not possible to give an exhaustive list of facts and circumstances from which an inference of threat to public security or public peace may be deduced. The District Magistrate will have to take a decision on the facts of each case. But in the instant case there is nothing in his order to indicate that it was necessary for the security of the public peace or for public safety to cancel the license of the petitioner. Mere enmity is not sufficient."

16. In Chhanga Prasad Sahu Vs. State of U.P. and others reported in 1984 AWC 145 (FB), after noticing the provisions of Section 17 (3) of the Arms Act the Full Bench in paragraph 5 held as follows:

"A perusal of abovementioned provisions indicates that the licensing authority has been given the power to suspend or revoe an arms licence only if any of the conditions mentioned in sub-clauses (a) to (e) of sub-section (3) of Section 17 of Act exists." sub section (5) of Section 17 makes it obligatory upon the licensing authority to, while passing the order revoking/suspending an arms licence, record in writing the reasons therefore and to, on demand, furnish a brief statement thereof to the holder of the license unless it considers that it will not be in the public interest to do so."

In paragraph-9 it has been emphasized as under:-

"it is true that in order to revoke/suspend an arms licence, the licensing authority has necessarily to come to the conclusion that the facts justifying revocation/suspension of licence mentioned in grounds (a) to (e) of section 17 exist"

23. In Ilam Singh v. Commissioner, Meerut Division and others [1987 ALL. L.J. 416] this Court held that under Section 17(3) (b) the licencing authority may suspend or revoke a licence if it becomes necessary for the security of public peace or public safety. In this case no report was lodged against the licensee indicating that he had used the gun in the incident which led to the breach of public peace or public safety. It was held that there must be some positive incident in which the petitioner participated and used his gun which led to breach of public peace or public safety and in the absence of the use of the gun by the licencee against the security of public peace or public safety the licence of the gun could not be suspended or revoked. The relevant paragraphs 4 and 5 of the judgment in Ilam Singh (supra) are being reproduced as under:

"4. Having heard the learned counsel for the petitioner I am of the view that the submissions raised by the learned counsel for the petitioner cannot be said to be without substance. Section 17(3) (b) of the Arms Act enacts that licensing authority may by order in writing suspend a licence or revoke the same if it becomes necessary for the security of public peace or the public safety. When once a person has been granted a licence and he acquires a gun, it becomes one of his properties. In the present case no incident of breach of security of the public peace or public sfety at the behest of the petitioner has been pointed out. Even no report was lodged against the petitioner indicating that he used his gun in the incident which led to the breach of public peace or public safety. Even though some reports might have been lodged but that could not be said to be a sufficient reason to cancel the licence."

5. There must be some positive incident in which the petitioner participated and used his gun which led to the breach of the public peace or public safety. In the absence of the use of the gun by the petitioner against the security of public peace or public safety the licence of the gun of the petitioner was not liable either to be suspended or revoked. The licensing authority as well as the Commissioner committed errors on the face of the record in cancelling the licence of the gun held by the petitioner in utter disregard of the provisions of Section 17 (3) (b) of the Arms Act. In view of these facts the impugned orders cannot be sustained and deserves to be quashed."

24. In Habib v. State of U.P. and others [2002 (44) ACC 783] this Court held that mere involvement in a criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking licence of fire arm was not justified. Paragraph 3 of this judgment reads as under:

"3. 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 Arms Act, has been dealt with by a Division Bench of this court reported in Sheo Prasad Misra Vs. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Masi Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside."

25. In Satish Singh v. District Magistrate, Sultanpur 2009 (4) ADJ 33 (LB), this Court elaborately explained what is detrimental to the security of the public peace or public safety and held that mere involvement in criminal case cannot in any way affect the public security or public interest. Paragraphs 6 and 7 of Satish Singh case (supra) are being reproduced as under:

"6. A plain reading of section 17 indicates that the arms licence can be cancelled or suspended on the ground that the licensing authority deems it necessary for security of the public peace or the

public safety. In the present case, while passing the impugned order, neither the District Magistrate nor the appellate authority has recorded the finding as to how and under what circumstance, the possession of arms licence by the petitioner, is detrimental to the public peace or the public security and safety. Merely because criminal case is pending more so, does not seem to attract the provisions of section 17 of the Arms Act. To attract the provisions of section 17 of the Arms Act with regard to public peace, security and safety it shall always be incumbent on the authorities to record a finding that how, under what circumstances and what manner, the possession of arms licence shall be detrimental to public peace, safety and security. In absence of such finding merely on the ground that a criminal case is pending without any mitigating circumstances with regard to endanger of public peace, safety and security, the provisions contained under Section 17 of the Arms Act, shall not satisfy.

7. Needless to say that right to life and liberty are guaranteed under Article 21 of the Constitution of India and the arms licences are granted for personal safety and security after due inquiry by the authorities in accordance with the provisions contained in Arms Act, 1959. The provisions of section 17 of the Arms Act with regard to suspension or cancellation of arms licence cannot be invoked lightly in an arbitrary manner. The provisions contained under Section 17 of the Arms Act should be construed strictly and not liberally. The conditions provided therein, should be satisfied by the authorities before proceeding ahead to cancel or suspend an arms licence. We may take notice of the fact that any reason whatsoever, the crime rate is raising day by day. The Government is not in a position to provide security to each and every person individually. Right to possess arms is statutory right but right to life and liberty is fundamental guaranteed by Article 21 of the Constitution of India. Corollary to it, it is citizen's right to possess firearms for their personal safety to save their family from miscreants. It is often said that ordinarily in a civilised society, only civilised persons require arms licence for their safety and security and not the criminals. Of course, in case the government feels that arms licence are abused for oblique motive or criminal activities, then appropriate measures may be adopted to check such mal-practice. But arms licence should not be suspended in a routine manner mechanically, without application of mind and keeping in view the letter and spirit of Section 17 of the Arms Act."

28. In Thakur Prasad Vs. State of U.P. and others reported 2013(31) LCD 1460 (LB) this Court after referring to the earlier pronouncements in the case of Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998 (16) LCD 905] and Habib Vs. State of U.P., 2002 ACC 783, held in paragraphs 10 and 11 as follows:

"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 v. District Magistrate, Sitapur [1998 916) 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 pendency of a criminal case."
11. Further, this Court in the case of Habib v. State of U.P. 2002 ACC 783 held as under:

"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 Arms Act, has been dealt with by a Division Bench of this Court in Sheo prasad Misra Vs. District Magistrate, Basti and Others, 1978 AWC 122, wherein the Division Bench relying upon the earlier decision in Masi Uddin Vs. Commissioner, Allahabad, 1972 ALJ 573, found that mere involvement in criminal case cannot, in any way, affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in the above mentioned cases. I am in full

agreement with the view taken by the Division Bench that these orders cannot be sustained and deserves to be quashed and are hereby quashed.

There is yet another reason that during the pendency of the present writ petition, the petitioner has been acquitted from the aforesaid criminal case and at present there is neither any case pending, nor any conviction has been attributed to the petitioner, as is evident from Annexure SA-I and II to the supplementary affidavit filed by the petitioner. In this view of the matter, the petitioner is entitled to have the fire-arm licence."

32. In Ghanshyam Gupta v. State of U.P. and others [2016 (34) LCD 3035] this Court has again held that the necessary ingredients to invoke jurisdiction of the licencing authority in terms of Section 17 were clearly lacking and no finding had been returned on the basis of materials produced in that regard by the licencing authority, which must justify passing of the order of cancellation. Paragraph 9 of the said judgment is being quoted as under:

"9. In a recent decision of Lucknow Bench of this court in Surya Narain Mishra v. Stae of U.P. and others, reported in 2015 (7) ADJ 510, similar view has been taken by this Court relying upon subsequent decisions. Para-14 of the judgment is reproduced:

"14. In the case of Raj Kumar Verma v. State of U.P., 2013 (80) ACC 231 this court in paragraph No.3 held as under:-

"The ground for issue of show-cause notice, suspension and ultimately cancellation of the licence is that one and precisely one criminal case was registered against the petitioner. The District Magistrate has also held that the petitioner has been enlarged on bail. He has gone further to observe that if the licence remained intact, the petitioner, may disturb public peace and tranquility. The same findings have been given by the Commissioner, Unmindful of the fact that this Court is repeating the law of the land, but the deaf ears of the administrative officers do not ready to succumb the law of the land. The settled law is that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranqulity shall not create the ground for the cancellation of Armed Licence. In Ram Suchi v. Commissioner, Devipatan Division reported in 2004 (22) LCD 1643, it was held that this law was relied upon in Balram Singh Vs. Satate of U.P. 2006 (24) LCD 1359. Mere apprehension without substance is simply an opinion which has no legs to stand. Personal whims are not allowed to be reflected while acting as a public servant.

36. In the present case the petitioner's licence was cancelled by the District Magistrate on the ground of pendency of criminal case against him. The petitioner was later on acquitted of the criminal case by order dated 17.1.2003. A perusal of the order of acquittal does not show the use of fire arm. After acquittal the very basis of the order of cancellation vanished. The finding of the District Magistrate as affirmed by the Commissioner, that it was not in the interest of public peace and the public security that the licence remained with the petitioner/licencee, is not based on any evidence/material, except the police reports which in their turn were in view of the pendency of the criminal case against the petitioner. On mere apprehension expressed in the impugned orders that the petitioner would misuse the fire arm and would extend threat to the persons of the weaker section of the society, the arm licence could not be cancelled."

14. This Court in the case of ***Jay Bhagwan Kanodia Vs. The Commissioner and another*** decided on 26.07.2012 and ***Ram Singh Vs. State of U.P. and others*** decided on 28.03.2019 has held that fire arms licence can only be cancelled if it falls within sub Section (3) of Section 17 of the Act.

15. The provision of Sub-section (3) of Section 17 of the Arms Act provides various conditions for variation/cancellation or suspension of the arms licence, which is reproduced as under:-

"17.Variation, suspension and revocation of licences-

3.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."

16. A licence may be cancelled, inter alia on the ground that it is "necessary for the security of the public peace or for public safety' to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the licence. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of the public peace or public safety. There should be something more than mere enmity. There should be some evidence of the provocative utterances of the licensee or of his suspicious movements or of his criminal designs and conspiracy in reinforcement of the evidence of enmity. It is not possible to give an exhaustive list of facts and circumstances from which an inference of threat to public security or public peace may be deduced. The District Magistrate will have to take a decision on the facts of each case. But in the instant case there 'is nothing in his order to indicate that it was necessary for the security of the public peace or for public safety to cancel the licence of the petitioner. Mere enmity is not sufficient.

17. The Commissioner did not take into consideration the provisions of Section 17 at all. His order gives an impression of having been made in a mechanical manner. The cancellation of a licence destroys a valuable privilege of a free citizen of a free country. The District Magistrate and the Commissioner ought to fairly consider the facts and circumstances of each case and should also bear in mind the provisions of Section 17 The law does not give them a free hand.

18. Insofar as the present case is concerned, the aforesaid orders were passed the

authorities cancelling the fair arm license of the petitioner only on the ground that criminal case is pending against the petitioner. It is settled law that mere pendency of the criminal case is not sufficient ground to cancel the firearm license.

19. In this view of the matter, the order passed by the Commissioner, of the Division and the order passed by the District Magistrate concerned are liable to be set aside and the same are set aside.

20. The petition is allowed.

21. The District Magistrate, concerned is directed to pass fresh order in the matter taking into consideration observations made herein above within a period of two months from the date of production of certified copy of this order.

Order Date :- 21.5.2025
T.S.

Digitally signed by :-
TRIBHUWAN SINGH
High Court of Judicature at Allahabad