

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.811 of 1998

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Sanjay Kumar Upadhyay son of Late Madan Moyan Upadhyay, R/o village Barahara, P.S. Barahara District Bhojpur, at present Mohalla Janakpur, P.S. Mufassil Gaya, District Gaya.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Pandey, Adv.

For the Respondent/s : Mr. Devendra Kumar Sinha, AAG-2
Mr. Pramod Kumar Sinha, AC to AAG-2
Mr. Mohanjee
Mr. Ahsanuddin Amanullah

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-02-2015

Shivaji Pandey, J

Heard counsel for the petitioner and the State.

In this case, petitioner has made a prayer for release of double barrel gun vide No. 133089.

Barhara P.S. Case No. 7(8)67 was instituted against the father of petitioner for the offences u/s 307, 324 IPC and 25A/27 of the Arms Act. In pursuance of the said case, father of the petitioner deposited his licensee gun to the Officer In-charge, Barhara Police Station on 6th October 1967. After investigation, Police submitted charge sheet and after commitment the trial was conducted by the 2nd Additional Sessions Judge, Ara who vide judgment and order dated 22nd September 1976 acquitted all the accused persons of both the parties.

An application was filed by father of the petitioner in S.T.No. 134 of 1971 for release of his gun and licence. Accordingly, the court passed order in favour of father of the petitioner. Thereafter father of the petitioner had filed an application before the Superintendent of Police for release of his gun and licence. The licensee gun could not be released. During enquiry, it was found that the said gun bearing No. 133089 was sold to one Yamuna Prasad Verma, retired

IAS.

On notice, respondent no.6 Yamuna Prasad Verma appeared and filed a counter affidavit. He has made a statement that while he was posted as Deputy Collector, Darbhanga, he filed an application for allotment of Double Barrel gun out of stock of the Government. After four years, he was allotted the said gun bearing No.133089, i.e. the gun of father of the petitioner and he also deposited the price thereof. In Para-10 of the counter affidavit, he has made a categorical statement that when the fact of litigation came to his knowledge, the gun in question was returned to the Government as far back as on 28th September 1994.

This Court vide order dated 5th December 2008 directed the Secretary, Home (Special), Government of Bihar to file a counter affidavit after making verification of the fact about the status of the gun deposited by Yamuna Prasad Verma. In pursuance thereof, he has filed an affidavit making categorical statement in Para-3 that the Superintendent of Police, Special Branch vide Memo No. D-1208 Bandoor, dated 26th February 2009 has written letter to the Principal Secretary, Department of Home, Govt. of Bihar informing that the gun in question has been received from Yamuna Prasad Verma, IAS (retired) and is in safe custody in the Special Branch Armoury.

In view of the positive statement made in the affidavit, as father of the petitioner has died long back, the Principal Secretary, Department of Home, Govt. of Bihar is hereby directed to release the gun in question in favour of petitioner within a period of six weeks from the date of receipt/production of copy of this order subject to requirements in any other case.

With this observation/direction, this petition is disposed of.

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(Shivaji Pandey, J)