

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5197 of 1997

Shiv Shankar Pathak So late Bishwanath Pathak, R/o village Jaso, P.S. Buxar,
District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna.
3. District Magistrate, Buxar.
4. The Superintendent of Police, Buxar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Hari Shkkankar Roy, Adv.

For the Respondent/s : Mr. Rakesh Ambashtha, AC to AAG-15.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-02-2015

Shivaji Pandey,J

Heard counsel for the petitioner and the State.

In this case, petitioner is challenging the order dated 15th November 1994 passed by the Divisional Commissioner, Patna in case No. 108 of 1994 by which the appeal of the petitioner has been dismissed, thereby affirmed the order dated 24th May 1994 passed by the District Magistrate, Buxar in Cr.Misc.No.50 of 1987, (Arms) 33/ of 1993 whereby and whereunder the District Magistrate has cancelled the arms licence of the petitioner.

The short facts of the case is that the petitioner was granted arms licence along with Rifle No. AB 840834 TOF.

Police lodged an FIR as Rajpaur P.S.Case No. 93 of 1986 for the offences u/s 399, 402, 414 IPC and 25(A) and 26 of the Arms Act, making allegation that the accused persons, namely, Janardan Singh Yadav, Anil Kumar Rai and Rajendra Singh were planning to commit dacoity, they were chased and arrested. The aforesaid rifle was recovered from the possession of Janaredan

Singh Yadav.

After institution of the case, an application was filed before the District Magistrate, Bhojpur, Ara by the Sub-Inspector, Rajpur Police Station. Giving details of the incident and requested for cancellation of arms licence.

On notice, petitioner appeared and took a plea that on 29th December 1986, he along with others had visited the house of Anil Kumar Rai, as he was not in the house, he had gone to his Khalihan and while returning home for dinner, petitioner and others were intercepted and from the possession of Janardan Singh Yadav rifle was recovered whereupon the Inspector had asked him to produce the licence in turn, he assured to produce the same on the next day. He went to the Police Station with the licence on 30th December 1986 but the Police refused to release the rifle, that compelled him to file a case for release before the SDJM, Buxar who vide order dated 26th May 1987(Annexure-2) passed the order for release of the rifle. In the criminal trial Sessions Trial Case No. 131 of 1991 against Janardan Singh Yadav , Rajendra Singh and Anil Kumar Rai all were given the benefit of doubt as the seizure witnesses did not support the case and other prosecution witnesses did not turn up.

The Collector as well as the Commissioner did not give any relief to the petitioner as the Collector had cancelled the licence and the Commissioner had affirmed it.

Counsel for the petitioner submits that the petitioner had gone to his relative Anil Kumar Rai while returning from his Khalihan at 8:00 P.M. in the night, his rifle was seized, when licence was produced on the next day, Police did not release the rifle. He has further submitted that though the petitioner was along with Anil Kumar Rai but he has not been made accused in this case.

It appears from the materials available on the record before the SDJM



(Annexure-2) statement has been made by the petitioner that he had gone to the house of Anil Kumar Rai, while returning back to his house along with Anil Kumar Rai and others, Police intercepted and seized the rifle from the possession of Janardan Singh Yadav (the accused of the case). Before the Collector, he had stated that he had gone to the house of Anil Kumar Rai when he did not find him there, had gone to the Khalihan, while returning his rifle was seized. At three places, the petitioner has given different and distinct stories, before the Collector it is stated that rifle was recovered from his possession, in the affidavit, produced before this Court he has stated that at 8 'O clock in the night rifle was recovered from the possession of Anil Kumar Rai whereas before the SDJM he had stated that rifle was recovered from the possession of Janardan Singh Yadav an affidavit dated 1st January 1987 sworn before public notary (not part of this petition, has been produced and kept on the record) would suggest that while returning from Khalihan along with Anil Rai, Rajendra Singh and Janardan Singh Yadav in the night at 08:00 P.M., Police seized rifle from Anil Kumar Rai. Three different stories have been given which are completely inconsistent whereas FIR states that interception of accused was made in the mid night.

Wavering stand of the petitioner at three places fortifies the stand of Police that he had given his rifle to accused persons for committing the offence. Though the accused persons have been acquitted on the ground of insufficient evidence, except seizure list witnesses, no one has turned up to support of the prosecution case. It is not in dispute that the rifle of the petitioner was seized by the Police and by the order of the SDJM, rifle was released in his favour.

Looking to the entire facts and circumstances of the case, this Court is of the view that the order of the Collector as well as of the Commissioner, in no way can be said to be faulted and the Collector on the basis of material on record

has arrived to a conclusion of cancellation of the licence. In a criminal trial, the charge has to be proved beyond reasonable doubt but in the case of cancellation of licence rigidity of test to prove beyond reasonable doubt does not apply. Petitioner has taken a plea that the Police has recovered from his possession cannot be accepted in view of the discrepancy in the statements, as aforesaid.

Accordingly, this petition is dismissed.

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(Shivaji Pandey, J)