

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11603 of 1998

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Ramadhar Sharma son of late Heera Sharma, resident of village- Dhuriari,
P.S.-Ghoshi, Jehanabad.

.... Petitioner/s

Versus

- 1.The State of Bihar
- 2.The Commissioner, Magadh Division, Gaya.
- 3.The Collector-cum-District Magistrate, Jehanabad.
- 4.The Officier-in-charge, Ghoshi Police Station, Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate.

For the Respondent/s : Md. Anisul Haque, A.C. to AAG-9.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

6 23-02-2015 Heard the counsel for the petitioner and the counsel
for the State.

In this case the petitioner is challenging the order dated 29.10.1998 passed by Commissioner, Magadh Division, Gaya, in Arms Appeal registered as Case No.34/96 whereby and whereunder the appeal has been rejected thereby affirmed the order dated 28.5.1996 passed by the Collector – cum –District Magistrate, Jehanabad, in Case No.54/District Magistrate 93-94. The petitioner being a licence holder of rifle being Arms Licence No.385/85 was made accused in Ghoshi P.S.Case No.177/93 for the offence under Sections 147,148, 149, 302, 307, 323 of I.P.C., 24 of Cattle .Trespass.Act and Section 27 of the Arms Act. On account of grazing crops of the informant by three buffaloes and



two youngs of accused persons, namely, Ganauri Sharma and Shaligram Sharma, which was protested by the informant upon which the petitioner along with other accused persons assaulted the brother of the informant Kaushalendra Kumar with lathi. Thereafter another brother of the informant, namely, America Sharma came there and on the order of Ramadhar Sharma, Sanjay Sharma opened fire at America Sharma causing injury on the left side of his chest as a result of which he instantly died.

The prosecution failed to ascertain who had resorted firing from licensed rifle of the petitioner. The accused persons including the petitioner were put on criminal trial bearing S.T. No.117/97 arising out of Ghoshi P.S. Case No.177/93, ultimately they were acquitted by the Judgment and order dated 19.12.1997 passed by the learned Sessions Judge, Jehanabad. The Collector initiated a proceeding for cancellation of licence vide Case No.54/D.M./ 1993-94 and vide order dated 25.8.1996 cancelled the Arms Licence of the petitioner on the ground that the arm was misused during occurrence in which one person died.

An appeal was filed before the Divisional Commissioner, Gaya who upheld the order of the District Magistrate holding that there was no merit in this appeal, accordingly, dismissed.



There was an incident of cattle trespass and grazing crops in the field of Rama Kant Sharma. The allegation was made that Sanjay Sharma, family member of the petitioner fired from his rifle killing Amerika Sharma on the spot. The rifle belonged to the petitioner. In a proceeding of cancellation of licence, rigidity of proving the fact in issue beyond reasonable doubt does not apply. But in the present case the licence has been cancelled on account of involvement of the petitioner in a criminal case. Even after acquittal the Commissioner though mentioned in the order has not dealt with the effect of order of acquittal and assigned any reason for cancellation of licence. While granting the licence for the arms, the authority is required to keep great care and caution with great satisfaction fully realizing the facts and attending circumstances. The same principle will equally be applicable in Licence Cancellation proceeding. Licensing Authority is required to pass order with great care and caution and to his satisfaction. Commissioner has misdirected himself in shifting onus upon him that his gun was not used in the incident. As there is no discussion and finding in the order of the appellate authority on the issue of his acquittal from criminal case.

Accordingly, the appellate order passed by the Commissioner is quashed and the matter is remitted back to the

Commissioner to pass a fresh order in accordance with law keeping in mind the petitioner has already been acquitted in criminal trial.

With this observation this application is disposed of.

As it is a very old matter the Commissioner is directed to dispose of the appeal within a period of six months from the date of receipt/production of a copy of this order.

(Shivaji Pandey, J)

AnilKrSinha/-

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