

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5919 of 2013

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Birendra Bahadur Singh Son Of Late Pashupati Nath Singh Resident Of Village-
Banhe Jee Ka Dera, Police Station- Dumraon, District- Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Buxar
4. The Superintendent of Police, Buxar
5. The Sub Divisional Magistrate, Dumraon
6. The Officer-In-Charge, Police Station- Dumraon, District- Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Roy, Adv.

For the Respondent/s : Mr. Ajay Kumar Sharma, J.C to PAAG

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-09-2015

Heard learned counsel for the petitioner and the State.

The order passed by the licensing authority in Arms Case No. 113 of 2009 on 18.02.2012, as contained in Annexure 9, as well as the order passed by the Commissioner, Patna Division, Patna dated 23.01.2013/23.02.2013, as contained in Annexure 10, are under challenge in this writ application.

It is contended on behalf of the petitioner that his firearm license has been cancelled in view of the fact that charge-sheet has been submitted against the petitioner and six others in connection with Dumraon P.S. Case No. 67/04,68/04 and he was also found involved in none FIR case No. 65/07 and 84/07 under Section 107 of the



Criminal Procedure Code. That apart, he is also allegedly involved in Dumraon P.S. Case No. 22/08 instituted under Sections 147,148,149,452 and 380 of the Indian Penal Code. Therefore, the licensing authority has come to the conclusion that petitioner's involvement in so many cases definitely indicates that if he keeps arm he may misuse the same. The appellate authority has also upheld the decision of the licensing authority quoting a decision of this Court rendered in **Shesh Nath Singh Vrs. State of Bihar, 1985 Cri Lj 1601** to the extent that where a criminal case is pending against the licensee, the authority can cancel the license without waiting for the judgment of conviction.

It is submitted that in fact the petitioner is not involved in any other criminal case except Dumraon P.S. Case No. 67/04,68/04 in which charge-sheet has been submitted against him under Sections 341,323,324,375,347,34 of the Indian Penal Code. It is contended that the petitioner is not involved under any Sections of the IPC for which capital punishment is there. Learned counsel further submits that, by incorrectly stating the involvement of the petitioner in several cases, the licensing authority has misdirected itself in coming to the conclusion as found in Annexure 9. So far Section 107 Cr.P.C proceeding is concerned, it is submitted that it was due to property dispute between the petitioner and his full brother and as such that

cannot form a ground for cancellation as the petitioner has never and nowhere misused his licensee gun.

A separate counter affidavit has been filed on behalf of the respondents no. 3 and 4. The District Magistrate though has stated in paragraph 8 of his counter affidavit that the petitioner is not an accused person rather he is witness in Dumraon P.S. Case No. 22/08. However, it is submitted on behalf of the petitioner that it has wrongly been stated that by enclosing fardbeyan in Dumraon P.S. Case No. 68/04 that the petitioner appears to be an accused. Surprisingly, a copy of fardbeyan has been brought on record as Annexure C but copy of the first information report which might have disclosed in the relevant column as to who are the accused person in that case, has not been brought on record. However, learned counsel for the State could not point out even from the reading of Annexure C that the petitioner's name appears there as an accused. In fact it stands stated that on alarm having been raised by the brother-in-law (Bahnoe) of the informant namely, Rajesh Kumar, this petitioner and others assembled there and then the miscreants fled away.

However, from the counter affidavit filed on behalf of the respondent no. 4 it appears that petitioner is involved in Dumraon P.S. Case No. 67/04 under Sections, 341, 323, 324, 375, 347/34 of the Indian Penal Code and in that case charge-sheet has already been



submitted which is pending for order before the court below. It has clearly been stated that in Dumraon P.S. Case No. 22/08 the petitioner is not an accused though he is witness in the FIR. So far a case under Section 107 Cr.P.C is concerned, the District Magistrate has taken a view that the same has already been dropped. Thus, in my view, the requirement was that the District Magistrate should have analyzed the situation with respect to the involvement of the petitioner in pending Criminal cases and only thereafter, upon his subjective satisfaction, he could have taken a stand. In this regard reference is made to a decision of the Full Bench of this Hon'ble Court rendered in **Kapildeo Singh Vs. State of Bihar [AIR 1987 Pat 122]** in which it has been held that though during pendency of the criminal case the licensing authority can take a decision of revocation of a license but at the same time it would have to record reasons for being satisfied that during the pendency of such criminal case the firearm should not be allowed to be kept by such person. That apart, it is not required that in every case license has either to be suspended or cancelled as the criminal case may range from a paltry traffic offence to the most horrendous capital crime. In my considered view, this aspect has not at all been considered by the District Magistrate and he has passed the impugned order in view of the alleged involvement of the petitioner in criminal cases, which is admittedly erroneous

consideration by him as the petitioner was at least not involved in one of such cases as stated above. So far the appellate order is concerned, of course the appellate authority has quoted a sentence from the order passed by this Court in **Shesh Nath Singh** (supra), however, it has also failed to consider the issue which had been discussed in detail by the Full Bench in **Kapildeo Singh** (supra).

As a result, this writ application succeeds. Both the orders passed by the licensing authority and the appellate authority are quashed and set aside. The matter is remanded back to the licensing authority for fresh consideration of the matter in accordance with law within eight weeks from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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