

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22374 of 2012

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Ram Ballabh Chaudhary, son of Sri Briksha Chaudhary, resident of village-
Kuwari, P.S. Paroo, District- Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, Muzaffarpur, District- Muzaffarpur
4. The Superintendent of Police, Muzaffarpur, District- Muzaffarpur
5. The Station Head Officer, Paroo Police Station, District- Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Vijay Kr. Singh,
Mr. Pankaj Kr. Singh, Advocates
For the State : Mr. S. K. Sharma, G.A. 1,
Mr. Himanshu Kumar Akela, A.C. to G.A. 1

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-09-2015

I have heard learned counsel for the petitioner and the
State.

The order dated 06.05.2008 passed by the Licensing
Authority-cum-Collector, Muzaffarpur revoking the licence
no.352/425 of the petitioner granted for the DBBL gun, as contained
in Annexure 6, as well as the appellate order dated 21.08.2012 passed
by the Commissioner, Tirhut Division, Muzaffarpur in Misc. (Arms)
Case No.31/2008 upholding the aforesaid order passed by the
licensing authority and rejecting the appeal of the petitioner, as
contained in Annexure 7, are under challenge in the writ application.

It appears from perusal of the order impugned as



contained in Annexure 6 that the licence of the petitioner has been cancelled on misconceived ground that he has been convicted and sentenced to undergo simple imprisonment for four months and also to deposit fine in a case under several sections of the I.P.C. including 27 of the Arms Act. A show cause notice was issued upon the petitioner to which he has responded by filing a reply on 08.04.2008 and again on 10.04.2008. It is contended that only stating that reply to the show cause notice was not satisfactory, the licence has been cancelled without consideration of the grounds raised by the petitioner.

Mr. S.K. Sharma, learned G.A. 1, has drawn attention of this Court towards Annexure 7 which is an order passed by the appellate authority stating that everything has been considered and it has also been considered therein that conviction of the petitioner was only under Section 323 of the Indian Penal Code and he was directed to serve a sentence of four months of simple imprisonment along with a fine of Rs.500/. However, the appellate court, though has upheld the conviction, but has directed the trial court to grant benefit to the petitioner under Section 3 of Probation of Offenders Act and, thereafter, the matter has been remanded. The Commissioner has held that if the weapon is allowed to be retained with such a person who has been convicted under Section 323 of the I.P.C. it may be

detrimental to the security of public peace or public safety.

However, now the question which is being raised by the petitioner is that in terms of Section 17(7) of the Arms Act, 1959 (hereinafter referred to be as 'the Act') a Court suspends or revokes the licence only if the licence holder has been convicted under the Arms Act. Learned counsel submits that neither the petitioner has been convicted under the Arms Act nor has a Court of law directed the arms licence to be suspended or cancelled. Thus, the aforesaid ground was not available to the licensing authority to cancel the licence on the basis of the conviction in a petty offence under Section 323 I.P.C. Learned counsel has placed reliance upon a decision of a Full Bench of this Court rendered in **Kapildeo Singh Vs. the State of Bihar and others [1987 BBCJ 274]** specially paragraph no.11 thereof in which it has been observed that though the matter of cancellation of licence would depend upon the subjective satisfaction of the licensing authority, however, for every pending criminal case, licences are not to be cancelled in a mechanical manner as the criminal case may vary from a paltry or a petty offence upto a horrendous capital offence. However, in the present case, the involvement of the petitioner in criminal case is not in question rather his conviction in a criminal case is a question and for that purpose 17(7) of the Act clearly lays down that the court concerned can cancel

or suspend the licence if the licence holder has been convicted under the Arms Act.

Per contra, Mr. Sharma, learned G.A. 1, takes help of Section 17 (3) (b) of the Act to impress upon this Court that if the licensing authority deems it necessary for the security of public peace or public safety he can suspend or revoke the licence. It is submitted that the appellate authority has clearly held that it would not be proper to allow the firearm to continue in a possession of a person who has been convicted even under Section 323 I.P.C.

In my considered opinion, the aforesaid limb of argument advanced on behalf of the State has to be rejected because such subjective satisfaction is not apparent from the order of the licensing authority contained in Annexure 6. The licensing authority has assumed that the conviction of the petitioner is in a case under Section 27 of the Arms Act also which is admittedly incorrect as there is no conviction of the petitioner in any case of the Arms Act even no charge-sheet was submitted under Arms Act. Thereafter, it has only been stated that reply submitted by the petitioner to the show cause was not satisfactory, thus, the licence has been cancelled. It does not appear at all from the order of the licensing authority that there was a subjective satisfaction of the licensing authority regarding the fact that allowing the petitioner to hold the licence of firearm would be

against the public peace and tranquility. In my considered opinion, the appellate authority has read more or inserted its own words in the order passed by the licensing authority which should not have been done and cannot be allowed.

Accordingly, this writ application succeeds. The impugned orders as contained in Annexures 6 and 7 are quashed and set aside. However, the matter is remanded back to the licensing authority to take a fresh decision after considering every aspect of the matter by passing a reasoned order within eight weeks from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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