

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 492 OF 2011

Deelip S/o Bhausahab Bankar

Age : 47 Yrs., Occ. : Business,

R/o : Ambelohal, Tq. Gangapur,

Dist. : Aurangabad.

..... PETITIONER

V E R S U S

1. The State of Maharashtra
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai – 400 032.

2. The Commissioner of Police
Aurangabad.

3. The Deputy Commissioner of Police
Aurangabad.

..... RESPONDENTS

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Mr. S.D.Ghayal, Advocate for Petitioner.

Mr. D.R.Kale, A.P.P. for R - 1 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 16th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned A.P.P., taken up for final hearing.

2. Heard Mr. S.D.Ghayal, the learned counsel for the petitioner and Mr. D.R.Kale, the learned A.P.P. for respondent No. 1 – State.

3. At the beginning of the hearing of present Writ Petition, the learned counsel for the petitioner submitted that the petitioner has been acquitted by the learned Judicial Magistrate First Class, Gangapur vide Judgment and Order dated 12/12/2014 in S.C.C. No. 313/2006 in connection with Crime No. 4/2006 registered with Police Station Waluj. The said copy of the Judgment is taken on record and marked 'X' for the purpose of identification.

4. Show cause notice was issued to the present petitioner by the Dy. Commissioner of Police [Head Quarter], Aurangabad on 23/06/2006, as to why the licence for revolver bearing No. CP/AGD/222/ III(B)/203 should not be cancelled in view of the fact that the offence is registered against him vide Crime No. 4/2006 at police station Waluj u/s 160 of the Indian Penal Code. The said show cause notice was replied by the petitioner vide reply dated 28/06/2006. The Commissioner of Police, Aurangabad passed order on 28/09/2006, whereby the explanation submitted by the petitioner was not accepted and thereby he cancelled the license for revolver issued in favour of the petitioner.

5. Feeling aggrieved thereby, statutory Appeal was filed u/s 18 of the Indian Arms Act, 1959. At the time of hearing of the Appeal, it appears that it was pointed out by the police authorities that apart from Crime No. 4/2006, there are other 5 offences registered against the petitioner. Considering the same, the appellate authority rejected the Appeal.

6. Show cause notice was issued since the petitioner was said to have been one of the accused in Crime No. 4/2006 at police station, Waluj. From the said offence, the petitioner is already acquitted by the competent criminal Court. From the order of the appellate authority, it is clear that the appellate authority has considered such material which was not part of the show cause notice. Thus, on extraneous ground, Appeal was dismissed by the appellate authority. On that count itself, the order passed by the appellate authority being unsustainable is required to be set aside and accordingly the order passed by the appellate authority is set aside.

7. Since, during the pendency of the present Writ Petition the petitioner has been acquitted by the competent criminal Court from the crime which was the basis for issuance of the show cause notice, this Court is of the considered view that the matter can be remitted back to respondent No. 2 for fresh consideration.

8. Further, it is made clear that respondent No. 2 shall grant opportunity of hearing to the petitioner and shall

consider his case only in the light of the show cause notice dated 23/06/2006 by considering the subsequent event i.e. Order of the learned Magistrate dated 12/12/2014 in S.C.C. No. 313/2006.

9. With this direction, the present Writ Petition is disposed of. Needless to mention, it shall be open for the authority to take appropriate course against the present petitioner in respect of the license. The Registrar [Judicial] of this Court is directed to remit the record and proceedings forthwith to respondent No. 2.

10. In view of the aforesaid observations, Rule is made absolute.

[V.M.DESHPANDE, J.]

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