

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9582 of 2016

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Md. Shabbir Yunus, son of Late Yunus, R/o of village & PO Ramjanpur PS,-
Barbigha District- Sheikhpura

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Sheikhpura.
2. The District Magistrate Sheikhpura.
3. The Superintendent of Police, Sheikhpura.
4. The Officer in charge, Barbigha Police station, District- Sheikhpura

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bipin Kumar, Advocate Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. Anirban Kurdu, SC-24 Mr. D.S. Shekhar, AC to SC-24

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 28-11-2016

Heard parties.

The author of the report dated 15.01.2016, who is the Superintendent of Police, Sheikhpura, is present in person. He had recommended vide the aforesaid report, which is available in the original record produced for perusal of this Court, that though Officer-in-charge and S.D.P.O. concerned had recommended for grant of licence but, he recommended for not granting a licence for the reason that during Lok Sabha election of 2014, a proceeding was initiated against the petitioner under Section 107 Cr.P.C. However, no details of such proceeding are available on the record. It could not even be produced by the concerned at the time of hearing of this case so that it



could be ascertained as to what was actually done- whether the petitioner was directed to execute a bond whether the petitioner had executed a bond for keeping peace or whether any further action was taken against him.

In my view, the initiation of proceeding under Section 107 Cr.P.C. does not create a bar for grant of licence unless there has been any violation of the bond or undertaking etc. or after execution of such bond the petitioner was found to have been engaged in any activity which was detrimental to the public peace. Absolutely nothing has been produced in that respect before this Court at the time of hearing. Therefore, it has to be understood that the report suffers from vice of arbitrariness and, as such, it was not worth being relied upon by the licensing authority at the time of consideration of the matter.

That apart, under Section 13 (2) of the Arms Act, 1959, the licensing authority is required to seek a report from the Officer-in-charge of the nearest police station. The Superintendent of Police has no role to play in that as he is not supposed to submit any report. However, the reports are being forwarded through the S.D.P.O. and, thereafter, the Superintendent of Police. However, in a particular case, if the licensing authority requires that some enquiry to be held by the Superintendent of Police then there is no bar in doing that but this is



not a case in which such request was made to the Superintendent of Police. The Superintendent of Police, in place of forwarding the report of the Officer-in-charge, has sent its recommendation for not issuing licence on non-existent ground as discussed above.

While passing the order impugned, the District Magistrate-cum-licensing authority, Sheikhpura has heavily banked upon the aforesaid recommendation of the Superintendent of Police. Secondly, he has stated that sufficient evidence could not be produced by the petitioner regarding specific threat upon the petitioner.

In my view, the impugned order, on two counts, is not sustainable in law. Firstly, due to reliance on the aforesaid report considered as above and, secondly, since the issue of threat perception has been considered and decided by this Court in **Manish Kumar Vrs. State of Bihar and other analogous cases [AIR 2016 Patna 9]** holding that threat perception does not mean that a person, to qualify himself to get a firearm licence, would have to face actual overt act rather merely apprehension of the same would be enough. That apart, it has further been held that the lack of evidence regarding specific threat perception does not form a ground for refusal of licence under Section 14 of the Arms Act.

At this juncture, learned counsel appearing for the State has raised an issue that the petitioner has approached this Court



without availing the statutory remedy of appeal. In my view, such objection can be noted only to be rejected for the reason that for exercise of powers under Article 226 of the Constitution of India, the issue is not of jurisdiction but the discretion of the Court to intervene in the matter.

Since the issue is covered by a decision of this Court and the petitioner has approached this Court for quashing of the order having been passed by taking a decision contrary to the decision of this Court rendered in **Manish Kumar (Supra)**, in my view, it would be meaningless now to relegate the petitioner to the appellate authority.

Accordingly, this application succeeds. The impugned order dated 22.02.2016 passed by the District Magistrate-cum-licensing authority, Sheikhpura, as contained in Annexure-1, is quashed and set aside.

However, the licensing authority is directed to take a fresh decision in the matter within a period of three months from the date of receipt/production of a copy of this order.

It is made clear that the licensing authority may seek a fresh report from any of the police authority and such decision should be taken by him after that but the police authorities should also be cautious in sending such reports as the same should be based on



materials which would be available in record.

The personal appearance of the Superintendent of Police,
Sheikhpura is dispensed with.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.03.2017
Transmission Date	N.A.

