

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6075 of 2014

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Anjani Kumari S/O Late Babban Pd. Singh, Resident Of Court Area (Gaya More)
Town Jehanabad, P.S. Jehanabad, District Jehanabad

.... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner Magadh Division Gaya
3. District Magistrate, Jehanabad
4. Superintendent Of Police, Jehanabad
5. Officer-In-Charge Jehanabad, P.S. Jehanabad

.... Respondents

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Appearance :

For the Petitioner : Mr. Amar Nath Singh, Advocate
For the State : Mr. Sajid Salim Khan, S.C. 25

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-08-2016

Heard parties.

Petitioner seeks quashing of Annexure 4 which is an order dated 12.05.2012 passed by the District Magistrate-cum-Collector-cum-Licensing Authority, Jehanabad in Case No.06/D.M./2010 by which his two firearms licenses granted for DBBL gun and N.P. bore revolver have been cancelled chiefly on two grounds. First is due to his involvement in Jehanabad P.S. Case No.158/2004



registered under Sections 147, 148, 149, 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act in which charge-sheet was submitted on 02.09.2005. It is also stated in the impugned order that he is also involved in Jehanabad P.S. Case No.609/09 registered under Sections 420 and 379 of the Indian Penal Code. Second ground taken in the impugned order is that despite the direction by the Officer-in-Charge to deposit his firearms, he did not deposit the same.

It is urged on behalf of the petitioner that there was no order of the Licensing Authority directing the Officer-in-Charge concerned to direct the petitioner for depositing the firearms in the police station and, thus, the Officer-in-Charge has over-stepped his jurisdiction.

On such assertion having been made by the petitioner, this Court vide order dated 13.10.2015, had directed the State to produce the concerned record to show that the notice was given to the petitioner by the Officer-in-Charge, Jehanabad Police Station for depositing his firearms concerned. Thereafter, a supplementary counter affidavit was filed and Annexure B was appended thereto showing that notice must have been given to the petitioner before 08.10.2010 as in his letter to the District Magistrate he has made a request not to direct for depositing of the firearms in the prevailing



circumstances. Then this Court directed the author of the Annexure B to remain personally present before this Court. On 05.01.2016 the Officer-in-Charge, Jehanabad Police Station appeared before this Court, however, he could not produce any direction either of the Licensing Authority directing him to issue notice to the petitioner for depositing the firearms or copy of any letter or notice addressed to the petitioner issued by the then Officer-in-Charge for that purpose.

Records have been produced for perusal of this Court. It does not contain any notice or letter issued to the petitioner by the Officer-in-Charge of the police station. However, there is a document which shows that some sort of notice was received by the petitioner on 13.12.2010. If this is the document upon which the State is relying to establish before this Court that notice for depositing the firearms was issued and received by the petitioner on 13.12.2010 then it defeats the case of the State that before 08.10.2010 the petitioner was knowing regarding such notice having been issued as a letter dated 08.10.2010 was written to the District Magistrate for requesting not to deposit the firearm, a copy of which has been appended as Annexure B series. It is apparent from Annexure 3, which is a notice issued by the Licensing Authority that the aforesaid document showing receipt of notice on 13.12.2010, in



fact, was the notice issued by the Licensing Authority for cancellation of licence and not the notice for depositing of the firearms. That apart, there is no document at all showing that any direction ever was given by the Licensing Authority to the Officer-in-Charge to direct the petitioner to deposit his firearms. Now the question would arise as to whether the Officer-in-Charge had actually written such letter for depositing of firearms in the police case concerned which was pending since 2004? The answer has to be in negative because if that was required to be done then that ought to have been done immediately after lodging of the F.I.R. and not after six years and even assuming that after six years it was required and the petitioner did not deposit then gun and revolver should have been seized by the inquiry officer of that police case which was admittedly not done. This means that the gun was not required to be deposited in the concerned case as the allegation of firing, as would appear from the copy of the first information report which has been appended as Annexure 5, that allegation of firing was upon co-accused Bablu Sharma and allegation against the petitioner was that he along with other person was present fully armed and was obstructing the voters but it is not stated anywhere that he was armed with gun or his licensed gun.

So far the present issue is concerned, in my view, such



ground cannot be taken for cancellation of licence. Now the question is as to whether the order should be quashed and the Licensing Authority should be directed to release the firearm in favour of the petitioner? This Court has one difficulty in doing that because a case against him under Section 302 of the Indian Penal Code and 27 of the Arms Act is still pending. The petitioner was involved or not, petitioner used the firearm or not that has to be decided by the trial court and not by this Court or the Licensing Authority. However, it is also a fact that the Full Bench of this Court in **Kapildeo Singh Vs. the State of Bihar and others [1987 BBCJ 274]** has observed that involvement in each and every criminal case itself would not be enough for cancellation as the criminal case may vary from the petty traffic offence to the case of horrendous capital offence. Accordingly, that aspect should also have been taken care by the Licensing Authority. However, it has not considered as to whether the first information report reflects regarding involvement of the petitioner in firing or not.

Be that as it may, since the case is pending this Court is of the view that once the licence has been cancelled, petitioner cannot be allowed to be given gun back till a court of law does not exonerate him. It is urged on behalf of the petitioner at this juncture that main accused, Bablu Sharma has already been acquitted of the



criminal charges. Now, the question would be why the petitioner has not been acquitted which would mean that some how or the other trial court could not complete the proceeding or his trial was bifurcated. On that it is also submitted that petitioner has already filed a petition for his discharge. Thus, in my view, though there was prima facie material before the District Magistrate that a case has been registered against the petitioner but, thereafter, there was no evidence against him which would have been enough for cancellation of firearm licence, suspension of licence would have been sufficient till the finalization of the criminal trial concerned. Reference in this regard is made to a decision of a Division Bench of this Court rendered in **Mahesh Sharma Vs. State of Bihar (L.P.A. No.415 of 2000)**.

Accordingly, the order impugned is modified to the extent that the petitioner's licence would remain suspended till finalization of the criminal trial. So far other case lodged in 2009 is concerned, that has admittedly been registered under Section 420 and 379 of the I.P.C. and whether involvement in such case is enough for cancellation of licence would have to be considered by the Licensing Authority in view of the decision of the Full Bench rendered in **Kapildeo Singh (Supra)** at the time when such occasion would arise. If the petitioner is acquitted of the charges in

the first case then he will approach the Licensing Authority for revocation of the suspension of licence and at that point of time that aspect would also be considered by the Licensing Authority.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2016
Transmission Date	NA