

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11414 of 2015

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Mukesh Sharma Son of Sri Bameshwar Sharma R/o Village - Dehuni, P.S. - Ghoshi, District - Jehanabad.

.... Petitioner.

Versus

1. The State of Bihar.
2. The District Magistrate, Jehanabad.
3. The Superintendent of Police, Jehanabad.
4. The Station House Officer, Ghoshi, District - Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Dinu Kumar, Advocate

For the State : Mr. Anuj Kumar, AC to SC 7

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 04-01-2016

Heard learned counsel for the petitioner and the State.

Petitioner seeks quashing of the order dated 09.07.2015 by which the judicial Magistrate-cum-licensing Authority, Jehanabad has cancelled his license granted for N.P. bore rifle on the basis of the recommendation of the Senior Superintendent of Police, Jehanabad, saying that he has been made an accused of using N.P. bore riffle in Ghosi P.S. Case No. 169 of 2014.

It is contended that the order of cancellation of licence of the petitioner has been passed without following the principle of natural justice as no show case notice ever was issued/served upon the petitioner.



A counter affidavit and supplementary counter affidavit have been filed on behalf of the State. It appears from the first information report that there is an allegation against the petitioner of resorting to firing 13 rounds from his licensed rifle, however, that did not hit anybody but the case has been registered and charge sheet has been submitted against the petitioner under Sections 341, 323, 452/34 of the I.P.C. and Section 27 of Arms Act. When the matter was heard on earlier occasion, a question arose for consideration as to whether there was any effort on part of the police authority to ascertain by seizing the fire arms and getting it verified and tested by ballistic expert as to whether there was any firing from the weapon or not. From the supplementary counter affidavit filed in response of the aforesaid inquiry it appears that though the case was registered with an allegation that petitioner has resorted to firing 13 rounds from his licensed weapon, surprisingly the licensed weapon was not immediately seized by the police and after long time when certain witnesses allegedly stated something about that and the matter was supervised by the higher authority, the firearm was seized and sent for verification before the ballistic expert who has submitted its report vide Annexure-B series appended with the supplementary counter affidavit filed on behalf of the respondent No.7 opining that there was no firing from the



seized weapon. Though, this report was available to the Superintendent of Police, Jehanabad which has been sent to the S.D.J.M., Jehanabad vide memo No. 173 dated 15.06.2015 issued from his office on 15.06.2015 still a copy of the same was never made available with his report dated 20.06.2015 by the Superintendent of Police, Jehanabad to the licensing authority and as such there was no occasion for the licensing authority to consider this aspect that actually there was no firing from licensed weapon of the petitioner. That apart, the order impugned appears to have been passed heavily relying upon the recommendation of the Superintendent of Police only without granting any opportunity to the petitioner by issuing a show cause notice which in my opinion was necessary in the facts and circumstances of the case. It is not the pendency of each and every case which mandatorily requires cancellation of arms license rather, as per the full Bench in its decision rendered in **Kapildeo Singh Vs. the State of Bihar and others [AIR 1987 Patna 122]**, it would vary from case to case and the issue as to whether, in view of the pendency of particular case a firearm license is to be cancelled or not, has to be assessed by the licensing authority and thereafter an appropriate order should be passed by it. In the present case, there is no consideration at all as to whether in the facts and circumstances of the case after

consideration of reply of the petitioner, the license was required to be cancelled or not.

That being a situation, in my view, the order impugned cannot be allowed to sustain in its present form and accordingly the same is quashed and set aside. Matter is remitted back to the licensing authority for fresh consideration in accordance with law after granting reasonable opportunity to the petitioner expeditiously preferably within a period of 3 months from the date of receipt/production of a copy of this order.

Rajiv/-

(Dr. Ravi Ranjan, J.)

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