

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7224 of 2016

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1. Chandramani Mahto @ Chandramani Prasad Son of Bhupendra Mahto
2. Vijay Prasad Son of Chandramani Mahto Both resident of village - Bhakhri,
P.S. Noorsarai, Distt. - Nalanda

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Patna
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Nalanda at Biharsharif
4. The Superintendent of Police, Nalanda at Biharsharif

.... Respondents

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Appearance :

For the Petitioners : Mr. Sabal Kumar Jha, Advocate.

For the Respondents : Mr. M.K.PATHAK SC7-

Mr. Jawed Gaffar Khan, AC to SC-7

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 02-05-2016

Heard parties.

Through said application, the petitioners seek quashing of order dated 30.01.2014 and 08.02.2014 passed by the Divisional Commissioner, Patna in Arms Appeal No. 506 of 2012 by which he has upheld the order passed by the licensing authority, cancelled the license of the petitioners on the ground of involvement in criminal cases.

It is submitted on behalf of the petitioners that their licenses were cancelled on the ground of their involvement in Noorsarai P.S. Case No. 38 of 1994, which was registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms

Act. However, the petitioners' case is that they have been acquitted of the criminal charge in both the cases. The appeal has been dismissed accepting the findings of the licensing authority that the acquittal is on the ground that all the witnesses have been declared hostile but that cannot form a ground for revocation or cancellation of the license. The appellate authority has placed his reliance on decision of the Kerala High Court rendered in **V.K Thomas V. Revenue Board, Member, 1988 Cri LJ 336** holding that involvement of license holder in criminal cases is a relevant factor for revoking arms license. Acquittal in criminal case would not bar the authorities from revocation of the licenses. However, in my view, such stand taken by the appellate authority is erroneous. Full Bench of this Court in **Kapildeo Singh, Petitioner V. State of Bihar and others, Respondents reported in AIR 1987 Patna 122** has also observed that "the actual conviction or acquittal of the criminal charge does not have an inflexible or conclusive impact on the exercise of the discretion by the licensing authority thereunder. Even if the holder of the license may be acquitted by narrowly giving the benefit of doubt, the licensing authority could, perhaps, still take the view that along with other factors such a person may not be fit for holding an arm license. Thus, it is apparent that the conviction or acquittal does not have an inflexible impact of exercise of the



discretion by the licensing authority and even if there is acquittal by the court of competent jurisdiction the licensing authority may proceed to cancel or not to grant license to such person but only upon consideration of other materials that are available on record. In the present case the petitioners have not been acquitted granting benefit of doubt rather the same is on the ground that it was case of no evidence. Secondly, the licensing authority has merely based the order of cancellation on the ground of involvement in such in which judgment of acquittal has been passed but no other material has been discussed by the licensing authority which were available before it for taking such view. This Court in a decision rendered in **2016(1) PLJR Lalan Singh Vs. The State of Bihar through the Chief Secretary & Ors** has held that judgments pronounced by courts should not be analyzed and criticized in a statutory proceeding by the licensing authority after the same have attained finality. The rejection or cancellation cannot be on the ground that the judgment has been passed on a particular ground. However, if factors, other than such case in which judgment of acquittal has been passed, are also available then the licensing authority may take a decision for cancellation or refusal of license. In the present case, it does not appear that any other material was discussed by the authority rather it has based its decision on the erroneous ground that since the

judgment of acquittal is on the ground that prosecution witnesses have become hostile, it would not come to the rescue of the petitioner. In my view, if the accused has been acquitted of the charges, a statutory authority would not be empowered to treat him as a convict and unless other materials are available against him, a decision of cancellation of licenses cannot be taken.

Accordingly, this writ petition succeeds. The order impugned as contained in Annexure-5, is set aside and the matter is remitted back to the licensing authority for fresh consideration in accordance with law, while doing that he would be obliged to consider the decision of the Court rendered in **2016(1) PLJR Lalan Singh Vs. The State of Bihar through the Chief Secretary & Ors.**

However, it is made clear that the petitioners would be required to produce copies of both the judgments of acquittal.

(Dr. Ravi Ranjan, J.)

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