

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47767 of 2013

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1. Radhey Singh @ Radhey Shyam Singh S/O Late Jokhu Singh Resident
Of Village- Sheon, P.S.- Bhabua, District- Kaimur Petitioner

Versus

1. The State Of Bihar Opposite Party

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Appearance :

For the Petitioner : Mr. Rakesh Singh, Adv.
For the Opposite Party : Mr. Ram Anurag Singh (App)

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 23-12-2016 Heard the learned counsel for the petitioner and the State.

This is a petition for quashing the impugned order, dated 11.09.2013, passed by the Chief Judicial Magistrate, Kaimur at Bhabhua, in G.R. Case No. 1193 of 2012 arising out of Kaimur (Bhabhua) P.S. Case No. 261 of 2012.

The petitioner is holder of a licence of rifle (Rifle No. AB 861326 TAF) bearing Licence No. 6 of 1988, P.S. Bhabua. The rifle of the petitioner was seized by the police in connection with Kaimur (Bhabhua) P.S. Case No. 261 of 2012 under Sections 147, 148, 149, 323 and 307 of the Indian Penal Code and 27 of the Arms Act.

The petitioner prayed for release of the aforesaid Arms before the learned Chief Judicial Magistrate, Kaimur at Bhabhua, and by order, dated 11.09.2013, the learned Chief Judicial Magistrate refused to release the rifle in favour of the petitioner on the ground that there is tension between the parties.

Allegation in the first information report is that for land dispute the petitioner fired from his rifle causing injury at the hands of the son of the informant.

The contention of the petitioner is that the impugned order is not sustainable in as much as there is no cogent reason to detain the fire arm which might get damaged and lose its cost and standard due to lack of proper up-keep. His contention is that no proceeding for cancellation of the licence of the petitioner has been taken, hence, there is no reason not to hand over the licensee fire arm to the holder of the licence.



On the other hand, learned counsel for the State submits that since the investigating officer of the case did not send any proposal for cancellation of licence, therefore, licence has not been cancelled.

This Court had already by order, dated 12.12.2013 asked the State-respondent to seek instruction as to whether the District Magistrate, i.e., the competent authority under Arms Act has taken any step for cancellation of the licence. The counter affidavit, dated 09.01.2014, has been sworn by the Senior Deputy Collector, Kaimur at Bhabhua, stating the aforesaid fact.

After hearing the parties, I am of the view that the impugned order is not sustainable in law because the Court below has not assigned any cogent reason for refusal of the release of the licensee Arms to the licence holder. The tension between the parties can not be a ground to keep the fire arm, in seize, for long. Perhaps the same would not be examined for decision in the trial.

Hence, the impugned order, dated 11.09.2013, is **quashed** and the Court below is directed to release the licensee fire arm in favour of the holder of licensee on execution of bond of rupees one lakh along with two sureties of the like amount each with the condition that the petitioner shall not dispose of the same without permission of the Court and shall produce the same as and when will be required by the Court.

(Birendra Kumar, J)

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