

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5164 of 2014

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Nand Kumar Singh, S/O Late Bhuneshwar Prasad, Resident Of Village- Chhabhi Khas, P.S- Majhagadh, District- Gopalganj.

.... Petitioner

Versus

1. The State Of Bihar through D.G.P. Bihar, Patna.
2. The Commissioner Of Police, Saran Division, Chapra.
3. The District Magistrate, Gopalganj.
4. The Superintendent Of Police, Gopalganj.
5. The District Arms, Magistrate, Gopalganj.
6. Sub Inspector Of Majhagarh Police Station, District- Gopalganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dilip Kumar, Advocate

For the State : Mr. Krishna Kumar Singh, A.C. to G.P. 17

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-04-2016

Heard parties.

Petitioner seeks quashing of the order dated 10.04.2005 passed in Arms Case No.13/2002 as well as order dated 09.04.2005 passed in Arms Case No.19/2000 by the Collector, Gopalganj (Annexure 4 series) who happens to be the Licensing Authority, cancelling the arms licences of the petitioner as well as the appellate order dated 09.03.2006 (Annexure 5) passed by the Commissioner, Saran Division in Arms Appeal Case No.61 & 62/2005-06 by which the appeal has been dismissed upholding the orders passed by the Licensing Authority.

It is contended on behalf of the petitioner that arms licence was cancelled on the ground of pending criminal cases against

the petitioner's sons, namely, Sudhakar Singh and Vikash Kumar in P.S. Case No.155/2000 registered under sections 323, 324, 307/34 of the I.P.C and Section 27 of the Arms Act and Manjhagarh P.S. Case No.32/2002 registered under sections 25(1-B) A/26 of the Arms Act respectively.

Petitioner earlier filed writ application vide token no.1881/2008, however, after defects were pointed out, it was not removed in view of the fact that trial in the aforesaid case was going on and, on the basis of the pending criminal cases, the impugned orders were passed by the Licensing Authority as well as the appellate authority. However, after acquittal of the petitioner's son in the year 2013 the present writ application has been filed by the petitioner. Judgment of acquittal has been appended as Annexure 6 and 6A.

It is contended that in fact the cancellation itself was wrong in view of the decision of the Division Bench rendered in **Mahesh Sharma Vs. the State of Bihar & Ors. [2008(3)PLJR 186]** holding that even if criminal case is pending, there was material for the District Magistrate to presume that the allegation levelled against the petitioner in the F.I.R. was only prima facie true at that stage since the charge-sheet was submitted against the petitioner and trial was proceeding but the allegation cannot be finally accepted as true, therefore, the Licensing Authority was not justified in cancelling the petitioner's arms licence and till the conclusion of the concerned

criminal trial, only the order of suspension would have been fit to be passed in such a situation. However, if a person is acquitted in criminal case then consideration for revocation of order of suspension would have to be made.

In the facts and circumstances of the case, it is held that the order passed by the Licensing Authority would be treated to be order of suspension only in view of the decision rendered in **Mahesh Sharma (Supra)** and so far as the cancellation part of order is concerned those are quashed and set aside. Since the petitioner has been acquitted of the charges as per his claim, let him appear before the Licensing Authority concerned along with a copy of this order and copies of the relevant judgments of acquittal. In such a case, let the Licensing Authority consider the case of the petitioner for revocation of order of suspension of his firearm on its own merit and in accordance with law. It is expected that the decision would be taken within a period of four months from the date of receipt/production of a copy of this order.

This writ application stands disposed of.

Sanjay-II/-

(Dr. Ravi Ranjan, J)

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