

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16332 of 2014

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Krishna Prasad, Son of Sri Kameshwar Prasad, Resident of village - Imamganj,
Police Station - Rahui, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Commissioner, Patna Division, Patna
3. District Magistrate, Nalanda
4. District Magistrate, Sheikhpura
5. District Arms Officer, Nalanda
6. District Arms Officer of Shekhpura
7. Officer In-charge Police Station Rahui, District - Nalanda

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Senior Advocate
Mr. Pramod Kumar, Advocate
Mr. Ritesh Kumar, Advocate
Mr. Bimal Kumar Datta, Advocate

For the Respondent/s : Mr. S.Raza Ahmad, AAG-9
Mr. Anisul Haque, AC to AAG-9

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 20-06-2016

Heard parties.

The petitioner seeks quashing of Annexure-8 which is an order dated 13.04.2012 by which his licence no.2/81 granted for DBBL gun has been cancelled. He also assails the order dated 19.09.2013/18.01.2014 passed in Arms Appeal No.586/2012, as contained in Annexure-9, by the Divisional Commissioner, Patna by which his appeal filed against the aforesaid order has been dismissed.

From perusal of the impugned order, as contained in



Annexure-8, it appears that cancellation is on the ground that the petitioner had sold his firearm without seeking proper permission/approval from the competent authority and, thereafter, he had applied for purchase of the same after one year but in the meantime, he did not have any threat upon his life or property.

In my view, both the grounds taken for cancellation are not tenable inasmuch as it appears from the original records produced before this Court that the petitioner had applied for grant of permission to sell his firearm to Sri Manovar Akhtar and in the same letter, he had also sought permission for purchase of new firearm. It appears from another letter dated 1.04.2006 which is on the record and has been addressed to the District Magistrate, Nalanda that he had already sold the firearm to the aforesaid person and again had sought permission for purchasing a new firearm. Admittedly, the petitioner had sold his firearm on 15.12.2004, i.e., about 59 days of writing the letter dated 27.10.2004 as mentioned above.

It would be manifest from Section 5 (2) proviso (a) and (b) of the Arms Act that, before sale or transfer of firearm, an information has to be given to the District Magistrate or the Officer-in-charge of the nearest police station regarding such intention with the name and address of the purchaser. Further, the firearm should not be transferred before the expiry of 45 days after giving such

information to the competent authority. For better appreciation, relevant provision of Section 5 (2) Proviso (a) and (b) of the Arms Act is extracted as under:-

“Section 5 (2) Notwithstanding anything contained in sub-section (1), a person may, without holding a licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition:

Provided that no firearm or ammunition in respect of which a licence is required under section 3 and no arms in respect of which a licence is required under section 4 shall be sold or transferred by any person unless—

(a) he has informed in writing the district magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and

(b) a period of not less than forty-five days has expired after the giving of such information”.

In the case in hand, admittedly an application seeking permission for transfer of the firearm was filed on 27.10.2004 and firearm was sold on 15.12.2004, i.e., much after expiry of 45 days. Thus, in my view, the petitioner cannot be faulted with as the information was already given to the District Magistrate concerned. Under the same letter, he had also sought permission for purchase of firearm but no decision was taken by the authority. Thereafter, again he sought permission for purchase of firearm by sending subsequent letters. Thus, it cannot be said that he was sitting tight and he was not requiring any firearm. The observation of the licensing authority that

even after one year of selling of his firearm, he did not face any overt act, therefore, he does not have any threat perception is also not tenable inasmuch as it has been held time without number that for proving that a person is entitled for firearm, he does not have to face actual overt act as the apprehension of the same would be sufficient and in the present matter, the licensing authority was considering issue of cancellation not the issue of grant of licence.

Accordingly, both the orders impugned are quashed and set aside. The matter is remitted back to the licensing authority to take a decision on the request of the petitioner for purchase of fresh firearm in accordance with law within a period of two months from the date of receipt/production of a copy of this order.

This writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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