

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

CWP No. 21820 of 2011

Date of decision:11.05.2016

Sewa Singh

.....Petitioner

versus

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. G.L.Bajaj, Advocate
 for the petitioner.

Mr. Nilesh Bhardwaj, DAG, Punjab.

Rakesh Kumar Jain, J.(Oral)

The petitioner was holding the Arms License No. 58/1979 of .30 Carbine which was valid upto 22.08.1980. The said license was for a prohibited bore. Since the petitioner was holding the Arm even after the expiry of the license, therefore, he was asked to deposit the arm in the nearest police station. The petitioner deposited his weapon in Police Station Raman on 9.09.1990. The petitioner was issued a show cause notice that neither the license has been renewed nor he disposed of his weapon within the prescribed period of one year, therefore, as to why his weapon be not confiscated by the Government in terms of Section 21 of the Arms Act, 1959 (for short, 'the Act'). The petitioner was asked to file reply to the said notice within 15 days. After the notice, the petitioner filed his reply and appeared before the District Magistrate, Bathinda alleging that he had deposited his weapon in Police Station Raman on 9.09.1990 because his name

was on the hit list of the extremists, therefore, he could not get his license renewed. Ultimately, vide order dated 20.03.1997 the Additional District Magistrate, Bathinda ordered confiscation of the aforesaid .30 Carbine of the petitioner on the ground that the weapon was not disposed of by the petitioner within the prescribed period while taking recourse to Section 21(3) (4) and (5) of the Act and rule 46 (5) of the Arms Rules 1962 (for short, 'the Rules').

The petitioner filed an appeal which was disposed of by the Joint Secretary, Home on 19.09.1997 on the ground that the powers for the renewal of Prohibited bore weapons vested with the District Magistrates and the correspondence received with the police reports etc. was returned with the direction that the case be considered afresh.

It appears that there was a silence for a few years after the orders was passed on 16.09.1997. On the one hand, the respondent has alleged that the petitioner was called many time for the purpose of disposal of his application but on the other hand, the case of the petitioner is that he had approached but no body heard him.

Be that as it may, ultimately, the petitioner filed CWP No. 2103 of 2011 titled as *Sewa Singh vs. State of Punjab* and another in which the only prayer made by him was to decide his legal notice, addressed to the District Magistrate to consider his case and decide the same within the framework of law within the prescribed period. The said petition was disposed of on 8.02.2010 with the direction to the Government. Apropos, order passed by

this Court, the Principal Secretary, Home and Justice, Government of Punjab passed the order on 4.06.2010, observing that the license of the petitioner was not renewed after 1980 and was confiscated in the year 1997 in favour of the State because of the non disposal of the weapon by the licensee within the stipulated period granted by the Additional District Magistrate, Bathinda. It was also observed that the license can not be renewed and weapon can not be returned as per request of the licensee or the petitioner and the order passed by the Additional District Magistrate, Bathinda was confirmed by rejecting the request of the petitioner.

Aggrieved against the said order, the present petition has been filed.

At the time of notice of motion, it was argued by counsel for the petitioner that he would forgo his claim to have the weapon of prohibited bore and a license but since the weapon was confiscated, direction was sought to issue to the respondents to return the amount equivalent to the price of the weapon. On this premise, notice of motion was issued and the proceedings of the case were carried. On 3.11.2014 it was recorded by the Court that “ a new license has been issued although weapon has been seized. “It can give no conciliation or protection to hold a license without a weapon”.

Since the petitioner made a lot of hue and cry, therefore, on 6.05.2016, this Court deem it fit to ask the Deputy Commissioner, Bathinda to remain present in Court to explain the facts of the case. In compliance of the order, Basant Garg, Deputy Commissioner, Bathinda has put in appearance today in Court. It is

submitted by him that the license of the petitioner has been renewed only for the purpose of Non Prohibited Bore (NPB) and not for the prohibited bore(Carbine) and therefore, the petitioner can not be given .3 Carbine which was deposited by him way back in the year 1990 on the license of NPB. It is also submitted that after the confiscation of the Arm, it is deposited with the Government armoury and the jurisdiction vests with the Government for its disposal either by way of handing over the Arm itself to the licensee or its receipts after its sale.

State counsel has submitted that action has been initiated against the petitioner strictly in terms of Section 21 of the Act which provides that if any person having in his possession any arms or ammunition, the possession whereof has, in consequence of the expiration of the duration of a license, then he can be asked either to deposit the same with the police officer incharge of the nearest police station or with the licensed dealer. The said Arm once deposited has to be disposed of or received back within the period prescribed by the Government otherwise, it can be forfeited by the Order of the District Magistrate of the State. But before forfeiture of the Arm, it is incumbent upon the District Magistrate to issue a notice either upon the licensee or his legal heirs in case he is dead as to why the Arm may not be forfeited and after considering the report, order can be passed by the District Magistrate. Section 21 of the Act, for ready reference, is reproduced as under:-

*“Any person having in his possession
any arms or ammunition the possession*

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authenticity of this document
Chandigarh

whereof has, in consequence of the expiration of the duration of a licence or of the suspension or revocation of a licence or by the issue of a notification under section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in-charge of the nearest police station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation.--*In this sub-section "unit armoury" includes an armoury in a ship or establishment of the Indian Navy.*

(2) Where arms or ammunition have or has been deposited under sub-section (1), the depositor or in the case of his death, his legal representative, shall, at any time before the expiry of such period as may be prescribed, be entitled--

(a) to receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) to dispose, or authorise the disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this sub-section shall be deemed to authorise the return or

disposal of anything of which confiscation has been directed under section 32.

(3) All things deposited and not received back or disposed of under sub-section (2) within the period therein referred to shall be forfeited to Government by order of the district magistrate:

Provided that in the case of suspension of a licence no such forfeiture shall be ordered in respect of a thing covered by the licence during the period of suspension.

(4) Before making an order under sub-section (3) the district magistrate shall, by notice in writing to be served upon the depositor or in the case of his death, upon his legal representative, in the prescribed manner, require him to show cause within thirty days from the service of the notice why the things specified in the notice should not be forfeited.

(5) After considering the cause, if any, shown by the depositor or, as the case may be, his legal representative, the district magistrate shall pass such order as he thinks fit.

(6) The Government may at any time return to the depositor or his legal representative things forfeited to it or the proceeds of disposal thereof wholly or in part.”

It is further submitted by the State counsel that the Deputy Commissioner virtually became functus officio after the forfeiture of the gun as it can not be returned on his order rather the power vests with State Government in terms of Section 21(6) which provides that “*the Government may at any time return to the*

depositor or his legal representative things forfeited to it or the proceeds of disposal thereof wholly or in part". According to State counsel the petitioner still has a right to ask for the return of forfeited Arm or its proceeds but the said order can only be passed by the Government i.e. Home Secretary.

Faced with these circumstances, counsel for the petitioner has submitted that he may be allowed to withdraw this petition in order to avail his remedy in terms of Section 21(6) of the Act to make an appropriate application with the Government for the return of the deposited Arm or if it has already been sold then for its proceeds.

On the request of counsel for the petitioner, the present petition is disposed of as withdrawn. However, liberty is granted to the petitioner to avail his remedy so stated hereinabove. It is further ordered that in case, such an application is filed by the petitioner in terms of Section 21(6) of the Act to the Government, the same shall be decided by the Government as early as possible preferably within a period of one month from the date of receipt of application and after giving an opportunity of hearing to the petitioner. It is also pertinent to mention that the order passed by this Court may not be considered by the Government a direction to return the Arm to the petitioner until unless the petitioner is holding the necessary license to hold the Arm as given to him by the District Magistrate.

11th May, 2016**Shivani Kaushik****[Rakesh Kumar Jain]
Judge**