

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10358 of 2015**

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1. Saket Kumar @ Saket Choudhary Son of Vidyanand Choudhary,  
Resident of village Charawan, P.S. Muffasil, District Munger

.... .... Petitioners

Versus

1. The State of Bihar  
2. The Commissioner, Munger Division, Munger  
3. The District Arms Magistrate, Munger  
4. The Superintendent of Police, District Munger  
5. The Officer in Charge, Muffasil Police Station Munger, District Munger

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Pankaj Kumar Sinha, Adv.  
Mr. Kamal Kishore Jha, Adv.  
For the Respondent/s : Mr. S. Raza Ahmad, AAG-5  
Md. Kamil Akhtar, A.C. to A.A.G.-5.

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

3      29-06-2017                      Heard learned counsel for the petitioner and the  
learned A.A.G.-5 for the respondents.

The present writ application has been filed for quashing the order dated 25.03.2015, passed by respondent no.2, Commissioner, Munger Division, Munger in Arms Appeal No. 235 of 2014, whereby appeal of the petitioner has been dismissed, affirming the order passed vide Memo No. 683/Arms, dated 30.07.2014, by respondent no.3, the District Arms Magistrate, Munger, whereby License No. 4/2010 of N.P. Bore Rifle of the petitioner has been cancelled. Further prayer has been made for issuance of licence of Rifle of the petitioner.



The factual matrix of the case is that the petitioner had made an application for licence of rifle to the District Arms Magistrate, Munger and after due enquiry and satisfaction, the police recommended to the District Arms Magistrate, Munger to the effect that licence may be granted to the petitioner, who thereafter, on 21.04.2010, granted Licence No. 4/2010 to the petitioner to purchase N.P. Bore Rifle No. AB 09-11004. Consequent to the issuance of licence, the petitioner purchased N.P. Bore Rifle No. AB 09-11004 on 23.04.2010 from M/s Shiva Arms Corporation, Arms Ammunition Dealer Lallu Pokhar, Munger. Thereafter, petitioner's Licence No. 4/2010 was periodically renewed till 31.10.2015, on proper inspection of the arms in question. Subsequently, the petitioner was implicated as an accused in Muffasil P.S. Case No. 117 of 2014, dated 18.06.2014, registered for the offences punishable under Sections 302, 379/34 of the IPC and Section 27 of the Arms Act. Though, it was alleged against the petitioner that he called the deceased to attend Panchayati where the firing was alleged to have been made by two persons, namely Md. Aslam and Manoj Chaudhary.

The petitioner was informed through Memo No. 647/Arms, dated 22.07.2014, issued from the office of the District Arms Magistrate, Munger that through Memo No. 3141 CR dated



18.07.2014, S.P., Munger has recommended for cancellation of Licence No. 4/2010 of N.P. Bore Rifle No. AB 09-11004 and the petitioner was asked to submit show cause in this regard. The petitioner submitted his show cause on 24.07.2014, as contained in Annexure-5, stating therein that he is a social worker and is District General Secretary of Janta Dal (U) since long and at the alleged time and place of occurrence, he was not present with the rifle nor has he misused his rifle, before or after the occurrence.

The District Arms Magistrate, Munger, vide Memo No. 683/Arms dated 30.07.2014, as contained in Annexure-6, cancelled the Licence No. 4/2010 on the ground that the S.P., Munger, vide Memo No. 3141 CR, dated 18.07.2014, recommended for cancellation of licence of the rifle of the petitioner since he was made accused in Munger Muffasil P.S. Case No. 117 of 2014 dated 18.06.2014, registered under Sections 302, 379/34 of the IPC and Section 27 of the Arms Act wherein, during investigation it was found that the petitioner, being FIR named accused, was absconding. Moreover, the occurrence had taken place in connivance with the petitioner and other co-accused. The District Arms Magistrate, Munger found the reply to the show cause of the petitioner not satisfactory, hence, directed the Officer in Charge of Muffasil Police Station to seize Licence



No. 4/2010 of the Arms No. NP 09-11004 and to deposit the same at Police Station Malkhana.

Aggrieved by the order of the District Arms Magistrate, Munger, dated 30.07.2014, as contained in Annexure-6, the petitioner preferred Arms Appeal No. 235 of 2014 before Divisional Commissioner, Munger, who dismissed the said appeal vide order 25.03.2015, on the grounds that the petitioner is accused in Munger Muffasil P.S. Case No. 117 of 2014 and is absconding and that the District Arms Magistrate, Munger after considering the show cause of the petitioner, has cancelled the licence of the rifle of the petitioner. Hence, the present writ application.

It is submitted by the learned counsel for the petitioner that though, the petitioner was made accused in Munger Muffasil P.S. Case no. 117 of 2014, but there was no accusation against them of having resorted to firing. The accusation of firing was against two persons namely Md. Aslam and Manoj Chaudhari. This was neither alleged in the FIR nor was found during investigation that the rifle of the petitioner was used during occurrence. The rifle of the petitioner was not sent for examination to any ballistic expert. The FIR was registered on 18.06.2014 and on 21.06.2014, the petitioner surrendered his NP Bore Rifle No.



AB 09-11004 along with cartridges at A-One Gun House Arms and Ammunition Dealer Supreme Market (Azad Chowk), Munger.

It is further submitted that the petitioner was granted bail vide Cr. Misc. No. 43894 of 2014 by a co-ordinate Bench of this Court, vide order dated 23.03.2015, in connection with Munger Muffasil P.S. Case No. 117 of 2014. Moreover, the order of District Arms Magistrate, dated 30.07.2014, reflects that there is no application of mind, as only on the basis of the fact that the petitioner is implicated as an accused in a case, his licence was cancelled and that was the basis for issuance of show cause but the show cause submitted by the petitioner was never considered by the District Magistrate. Similarly, the Divisional Commissioner, Munger has also not applied his mind and failed to consider that the District Arms Magistrate did not consider the show cause submitted by the petitioner and affirmed the order of the District Arms Magistrate.

It is lastly submitted that the petitioner has been acquitted in Munger Muffasil P.S. Case No. 117 of 2014, vide judgment dated 23.01.2017, passed by learned 5<sup>th</sup> Addl. Sessions Judge, Munger in Sessions Trial No. 227 of 2016, hence the ground of petitioner being made accused in Munger Muffasil case No. 117 of 2014 is also not sustainable. Moreover, there is specific



provision under Section 17(7) of the Arms Act, which provides that a Court convicting the holder of a licence of any offence under the Act or the Rules made thereunder, may also suspend or revoke the licence. The proviso to Section 17(7) of the Arms Act provides that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void. Section 17(8) of the Arms Act provides that an order of suspension or revocation under sub-section (7) may also be made by an Appellate Court or by the High Court when exercising its power of revision.

Learned A.A.G.-5 submits that licence was cancelled, on the recommendation of S.P., Munger to the effect that the petitioner was implicated as an accused in Munger Muffasil P.S. Case No. 117 of 2014 and that he is absconding. Moreover, during investigation, it was found that in connivance with the petitioner and other co-accused, the occurrence took place near the house of the petitioner.

It is further submitted by learned counsel for the petitioner that the impugned orders, however, suffers from the vice of non-consideration of show cause and the orders are cryptic and non-speaking, particularly the order passed by the Divisional Commissioner. Moreover, the sole ground of cancellation of licence of the petitioner, on account of his being implicated as an



accused in Munger Muffasil Case No. 117 of 2014, has lost its force, since the petitioner has now been acquitted in the said case.

Considering the rival submissions of the parties, this Court is of the view that possessing the licence of arms is not a fundamental right but it is a statutory right. Section 17 of the Arms Act provides for variation, suspension and revocation of licences. Section 17(3)(a) to (e) provide for conditions under which the licence may be revoked. The conditions inter alia are unsoundness of mind or for any reason unfit for a licence, if it is deemed fit for the public peace or public safety, licence was obtained by suppression of material information or on basis of wrong information provided by the holder, contravention or failure to comply with a notice under Section 17(1) of the Arms Act, requiring him to deliver up the licence.

Though, one may say that sub-section (3) of Section 17 of the Arms Act does not, in specific terms, provide that the pendency of a criminal charge is a ground for suspension or revocation of licence, yet, it is equally true that it is not possible for the legislature to conceive every situation or eventuality, which may render suspension or revocation of a licence granted to a person. It is under such circumstances that the residuary direction has to be exercised by the licensing authority, who has to give his



satisfaction, in the given facts, circumstances and situation, whether the licence holder is unfit to hold the licence under the Act.

No doubt, the petitioner was accused in a case registered for serious offence under Section 302 of the IPC and that was the only ground for cancellation of licence under Section 17 (3)(a) of the Arms Act. It is well settled law that judicial review under Article 226 of the Constitution of India is primarily concerned with the decision making process rather than the merits of the initial decision. Natural justice does not mean giving a show cause and acceptance of reply only. The reply to the show cause given by the licence holder is required to be considered and based upon the overall circumstance, the licensing authority has to give his satisfaction to the effect that in view of the nature of case against the licence holder and in view of the circumstances, which gets culled out, the licence holder is unfit for holding the licence for arms under the Act. The safeguard in this regard is provided under sub-section (5) of Section 17 of the Arms Act which stipulates that the licensing authority must record reasons in writing and also furnish a brief statement of the same to the holder of licence, on his demand, unless in exceptional cases, he is of the opinion that it will not be in the public interest to furnish such



statement. Hence, from a conjoint of Section 17(3) and Section 17(5), it emanates that the subjective satisfaction has to be broadly and reasonably exercised. The impugned order passed by the Collector does not suggest that the reply to the show cause submitted by the petitioner was considered by the Collector and mechanically by a cryptic order, the Divisional Commissioner has affirmed the order of the District Arms Magistrate, hence on this ground also, the impugned orders cannot be sustained. Reliance may be placed on the case of Chandan Kumar Yadav Vs. State of Bihar reported in 2013(2) PLJR 605. In the said case also, the District Magistrate had held that the reply to the show cause is not satisfactory and hence it was held that the show cause is not unsustainable in law. Paragraph no.9 of the judgment reads as follows:-

“The order of District Magistrate simply states that the cause shown was not satisfactory. There is no discussion with regard to the cause shown by the appellant, the application of mind on it coupled with the reason for its non-acceptability. The appellant had denied that he was an accused in Gopalpur P.S. Case No. 175 of 2009. The District Magistrate did not consider or deal the issue and therefore failed to apply his mind to a relevant material vitiating the order. Likewise the appellant had contended that the other two cases were result



of a village feud and had been compromised has not been dealt with. No further discussion is required that the order of the District Magistrate was itself unsustainable in law.”

Section 17 of the Arms Act provides mechanism for variation, suspension and revocation of arms licenses. Section 17 of the Arms Act reads as follows:-

“17. Variation, suspension and revocation of licences.-

(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence,-

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or



revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.”

Sub-Section 7 of Section 17 of the Arms Act provides that a Court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence, while the proviso clause to Section 17(7) mandates that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void. Hence, power has been separately vested in a Court of law to the effect that while convicting the holder of a licence of any offence under the Act or the rules made thereunder, such Court may also



suspend or revoke the licence. The proviso to sub-section (7) of Section 17, renders such suspension or revocation, automatically void, when such conviction is set aside in appeal or otherwise. Sub-section (8) of Section 17 further stipulates that an order of suspension or revocation under sub-section (7) can also be made by the Appellate Court or by the High Court, while exercising the power of revision. Meaning thereby, that in case any order of acquittal is set aside by the Appellate Court or by the High Court, in revision or appeal, then in such eventuality, such Appellate Court or the High Court may also suspend or revoke the licence. Thus, it can be summed up to say that the requirement under sub-section (7), is quite distinct, than the discretion or subjective satisfaction, which has to be exercised under sub-section (3) of Section 17. However, in the present case, the arms licence of the petitioner was cancelled by the licensing authority, District Arms Magistrate, on the sole ground that he was named as an accused in a case registered under Section 302 of the IPC, in which he was absconding. Subsequently, the petitioner was granted bail and now has been acquitted. Moreover, the orders under impugn, have failed to give a consideration to the relevant fact, whether the licensed weapon has at all been alleged to have been employed or used. A Full Bench of this Court, in Kapildeo Singh Vs. The State



of Bihar, reported in 1987 PLJR 385, has adequately dealt on the issue:- “would the registration and pendency of a criminal case for a major or capital offence justify the suspension or revocation of a licence under Clause (a) of sub-section (3) of Section 17 of the Arms Act?”

While dealing with this issue it has been held in paragraph no. 10 and 11 of the said judgment in the following words:-

“10. ....The issue, thus, is whether the pendency of a major or capital crime case may not, in the opinion of the District Magistrate, satisfy him that such a person is unfit for holding the licence further. Plainly enough such discretion given by the statute cannot be put in a strait-jacket. It cannot possibly be said that in a particular case the implication of the holder in serious or horrendous capital crime may not furnish an adequate ground for the licensing authority for being satisfied that the former holder of the weapon is now unfit for the privilege of the licence granted under the Act. This is more so in the light of the fact that Subsection (1) requires the licensing authority to give notice in writing to deliver up the licence to it within such time as may be specified in the notice in the event of variation, suspension and the revocation of licences. That would invariably give an opportunity to the licensee, as in the present case to show some cause against such action. It is after consideration of this explanation that the licensing authority may, on the overall circumstances, be satisfied from the nature of the case that the person is now unfit for continuing as a licensee for arms. A further safeguard is provided by subsection (5) of [Section 17](#). The licensing authority must record in writing reasons therefor and also



furnish to the holder of the licence on demand a brief statement of the same unless in exceptional cases he is of the opinion that it will not be in the public interest to furnish such statement. Nevertheless the requirement of recording reasons in writing is inflexibly mandatory. Therefore, it cannot be easily said that the subjective satisfaction of the licensing authority hedged in by the statutory requirement cannot be exercised on the basis of the pendency of the serious or capital criminal charge. If such subjective satisfaction has been broadly and reasonably exercised, to my mind, it would come within the parameters of the statute under Clause (a) of Sub-section (3) of [Section 17](#).

11. A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under [Section 17\(3\)](#), in the case of the latter after notice and hearing of the explanation such action may well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons. It bears repetition that Sub-section (3) puts the matter in the subjective satisfaction of the licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised.”

In paragraph no.12 of the said judgment, it has been held that there is no requirement that there must be a formal conviction on a criminal charge for holding a person unfit for



possessing an arms licence. Relevant extract of paragraph no. 12 reads as follows:-

“12. ....It is not the requirement of Clause (a) aforesaid that there must be a formal conviction on a criminal charge only for holding a person as unfit. There is a wide gap betwixt the two, namely, a reasonable subjective satisfaction and an objective conviction on a criminal charge resting on the basis of acceptable evidence. One cannot go to the length of holding that because the matter is as yet pending trial the licensing authority could not be subjectively satisfied about the unfitness of the holder. If the argument of Mr. Mishra were to be accepted then in the context of even a most horrendous crime committed with licensed weapons, the licensing authority would be denuded of all powers of suspending or revoking the licence till the completion of the trial and a conviction therein. Perhaps, the matter can even be elongated so long as an appeal against such conviction may be pending. Indeed, it appears to me that under, Sub-section (3) the actual conviction or acquittal on 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 this licence 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 arms licence. Equally, conviction on any and every criminal charge would not provide an inflexible rule that the licensing authority must revoke the same and it may well be justified in allowing the continuance of the said licence. As is noticed hereafter, conviction and acquittal are issues of relevance under Sub-section (7) for the criminal Court and not conclusive for the licensing authority who is governed by the provisions of Sub-section (3).”

While dealing with sub-section (7) of Section 17, it



has been held in the following words:-

“13. Reference may now be instructively made to Sub-section (7) of [Section 17](#). This empowers the Court convicting the holder of a licence of any offence under the Act, to suspend or revoke the same. However, the proviso to the sub-section equally mandates that if the conviction is set aside on appeal or otherwise, the suspension or revocation would also become void. It is manifest therefrom that the statute has vested a different power in a different authority in the event of a conviction narrowly for offences under the Act or the rules framed thereunder. This is thus a separate power in the event of an objective conviction for a criminal offence under the Act. It is rightly rested on the substantiation of such a charge and on acquittal therefrom automatically renders the suspension or revocation void in itself. What has to be kept in mind is that the requirement or position under Sub-section (7) is distinct and different. Whilst the discretion under Sub-section (3) is based on the subjective satisfaction of the District Magistrate, the other is rested on the objective fact of a conviction under the [Arms Act](#) and the power of the criminal Court to do so. The two things are distinct and apart”

Thus, it can very well be concluded, by appreciating the ratio of what has been held by the Full Bench, that acquittal from a charge renders the suspension or revocation of licence void in itself. Moreover, it has specifically been held in paragraph no.11, by the Full Bench in Kapildeo Singh (supra) that it is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of licence validly granted. A criminal case may range from a paltry traffic offence to



the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of the latter after notice and hearing of the explanation such action may well become necessary.

This is not disputed by learned A.A.G.-5 that now the petitioner has been acquitted in Munger Muffasil Case No. 117 of 2014, which was the sole ground for cancellation of licence, hence, on this score also, the impugned orders cannot be sustained.

Accordingly, both the impugned orders as contained in Annexures- 5 and 6, passed by District Arms Magistrate, Munger and Divisional Commissioner, Munger Division, Munger, being bereft of adequate reasons are hereby set aside.

Accordingly, the present writ application is allowed.

However, this order does not preclude the licencing authority, to proceed against the petitioner under the provisions of the Act, if the petitioner violates the terms of licence in future.

**(Dinesh Kumar Singh, J)**

Amrendra/-

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