

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1415 OF 2016

Balaji Pundlikrao Shinde
age 51 years, occ. agriculture
r/o Saraswati Colony
old Ausa
Latur

Petitioner

Versus

1. The State of Maharashtra
Through Chief Secretary
Mantralaya, Mumbai 32.
2. The Divisional Commissioner
Aurangabad
3. The Collector, Latur
District Latur.
4. The Superintendent of Police
Latur.

Respondents

Mr. A.N. Sabnis, advocate for the petitioner.
Mr. K.D. Mundhe, A.P.P. for all Respondents.

**CORAM : R.M.BORDE &
A. M. DHAVAL, JJ.**
DATE : 9th JUNE, 2017

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally at admission stage by consent of learned counsel for the respective parties.

3. Petitioner is a holder of arms licence which was granted in the year 2001. The licence of the petitioner was in force upto 31st December, 2013. After expiry of the licence, petitioner tendered application to the District Magistrate seeking renewal. The District Magistrate, however, issued notice in the month of July 2014 calling upon the petitioner to explain as to why the arms licence issued in his favour shall not be cancelled on account of registration of crime bearing no. 54/2004 under sections 447, 427, 323 r/w 34 of the Indian Penal Code against him. After receipt of reply of petitioner, the District Magistrate, vide order dated 19.01.2015, proceeded to direct revocation of the arms licence issued in favour of petitioner. Petitioner presented appeal to the appellate forum i.e. Divisional Commissioner, which came to be decided on 25.05.2016. The appellate authority, while rejecting the appeal has confirmed the order passed by the District Magistrate.

4. Petitioner contends that though the offence was registered in the year 2005 under sections 447, 427, 323 r/w 34 of the Indian Penal Code, the arms licence issued in his favour was renewed from time to time till 2013. Petitioner further contends that he has been acquitted in the criminal case lodged against him on 28.04.2014 however, without taking notice of this fact, the District Magistrate proceeded to direct revocation of the licence. The appellate forum also has not applied its mind to this crucial aspect and proceeded to dismiss the appeal.

5. On perusal of the judgment in the criminal case, it is evident that the criminal case lodged against petitioner arises out of the civil dispute between two parties claiming their entitlement in

respect of a residential plot. The dispute between the parties arises as a result of property rights in relation to the residential property. The complainant has not alleged that the petitioner, at any point of time, has misused the weapon or threatened the complainant with the weapon. There is absolutely no nexus between issuance of arms licence or possession of the weapon by the petitioner and the alleged crime registered against him. Apart from this, the petitioner has been acquitted of the charge levelled against him. Petitioner is a possessor of arms licence since 2001, which was renewed upto the year 2013. There is no allegation levelled against the petitioner in respect of misuse of the arm possessed by him. There is also no allegation made in the complaint lodged against the petitioner which is a basis for revocation of the arms licence issued in favour of petitioner.

6. Section 15 of the Arms Act, 1959, mandates that a licence under section 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it was granted. It is further provided under sub-section (2) that licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as as the licensing authority may in each case determine. Sub-section (3) of section 15 provides that every licence shall, unless licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof. Section 13 and 14 of the Act relates to grant of licences and refusal thereof. Petitioner

has been granted licence in the year 2001. Although provision relating to refusal i.e. section 14 has application by virtue of sub-section (3) of section 15, there is absolutely no ground made out for revocation of the licence. Even otherwise, licence is renewable unless the same is revoked for the reasons to be recorded in writing. The authority directing revocation of the licence is expected to apply its mind to the record of the case and thereafter take decision. In the instant matter it appears that neither the issuing authority nor the appellate authority has applied its mind to the record of the case and has casually turned down the request of the petitioner for renewal of the licence. The crime alleged against the petitioner has no nexus with issuance of arms licence and, apart from this, petitioner has been acquitted of the charge levelled against him. Dispute between the parties giving rise to the alleged crime is essentially of civil nature. In our view, the order passed by the issuing authority as well as appellate authority being without application of mind to the record of the case, deserves to be quashed and set aside.

7. Order passed by the issuing authority on 19.01.2015 as well as appellate authority dismissing the appeal on 25.05.2016 are quashed and set aside and, the District Magistrate, issuing authority, is directed to grant renewal of licence in accordance with the provisions of Arms Act, 1959. Necessary steps shall be taken within a period of eight weeks from today. Rule made absolute.

(A.M. DHAVALA)
JUDGE

(R.M.BORDE)
JUDGE