

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3037 OF 2016

Crasent Lucas D'Mello	...	Petitioner
Vs.		
Hon'ble Home Minister, Home Ministry, State of Maharashtra, Mantralaya, Mumbai & Ors.	...	Respondents

Mr. T.N. Sonawane for the Petitioner.

Mrs. M.M. Deshmukh, A.P.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 11TH JANUARY 2017.

P.C. :

1. Rule. Rule made returnable forthwith. Heard finally, by consent.

2. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner is challenging the orders dated 30th November 2015 and 3rd August 2016 passed by the Deputy Commissioner of Police, Head Quarter-I, Mumbai and Home Ministry of Government of Maharashtra, respectively, which reads as follows :-

“Arm Licence given to the Petitioner is suspended.”

3. The said licence is suspended under Section 17(3)(b) of the Arms Act, 1959, on the only ground that FIR bearing C.R. No.299 of 2014 is registered against the Petitioner at Chembur Police Station, Mumbai, for the offences punishable under Sections 324, 323, 504, 506(2) and 427 of IPC and the said case is subjudice.

4. We have perused the copy of the FIR bearing C.R. No.299 of 2014, annexed at page No.74 of the paper-book. We have perused the statements made in the said FIR by Pacival Dominic D'Mello, the First Informant, which nowhere discloses that the Petitioner had used the arm in commission of the said offence. The allegations in the FIR are made that the Petitioner has assaulted the Complainant/First Informant with the help of *chappal* and wooden stick.

5. We have perused the impugned orders. Perusal of the same discloses that the Petitioner's arm licence is suspended on the ground that by misusing the arm, Petitioner has committed breach of public peace. This finding is contrary to the averments made in the complaint against the Petitioner. It is not the case of the Respondent-State also that the Petitioner used the said arm in commission of the crime registered against him.

6. Section 17 of the Arms Act deals with variation, suspension and revocation of licence. Under sub-section (3) of Section 17, the licensing authority can suspend or revoke the Arms Licence on the grounds mentioned in clauses (a) to (e) thereof. In the present case, we are concerned with clause 17(b), under which a licence can be suspended or revoked, if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence. The provisions of Section 17(3)(b) of the Arms Act fell for consideration before the Division Bench of this Court in Criminal Writ Petition No.594 of 2013. In Paragraph No.12 of the said Judgment, the Division Bench has made following observations :-

“12. The provisions of Section 17-A of the Arms Act indicate that arms licence can be cancelled or suspended, if the licensing authority finds it necessary for the security of public peace or public safety. Merely because a criminal case is pending, the provisions of Section 17 of the Arms Act would not be attracted. Such provisions would be attracted in case the licensing authority finds that continuance of licence is detrimental to public peace or public security and safety. But the authority concerned will have to record a finding that how and under what circumstances and in what manner possession of arms licence could be contrary to the provisions of Section 17-B of the Arms

Act. Each case is required to be considered on its own merits.”

7. In paragraph No.12 of the said Judgment, the Division Bench also held that the provisions of Section 17(3)(b) of the Arms Act indicate that the arms licence can be cancelled and suspended, if the licensing authority finds it necessary for the security of public peace or public safety. Merely because a criminal case is pending, the provisions of Section 17 of the Arms Act would not be attracted. It is further observed that such provisions would be attracted in case the licensing authority finds that continuance of licence is detrimental to public peace or public security and safety. It was also observed that the licensing authority will have to record a finding that how and under what circumstances and in what manner, possession of arms licence could be contrary to the provisions of Section 17(3)(b) of the Arms Act.

8. Thus, merely because the FIR is registered against the person, the arm licence cannot be suspended. In order to suspend or revoke the arm licence under Section 17(3)(b) of the Arms Act, it must be shown that the licensing authority felt it necessary for the security of public peace or public safety to suspend or revoke the licence.

9. Now reverting back to the present case, Petitioner's licence has been suspended solely on the ground that the Petitioner has misused the arm and thereby caused breach of public peace. There is no material on record, not even any averments made in the complaint registered against the Petitioner, to show that either the Petitioner has misused the arm or that it has resulted into breach of public peace.

10. In the above circumstances, the two orders impugned in the present Petition cannot be sustained and the same are quashed and set aside. The Petition is allowed in terms of prayer clauses (b) and (c).

11. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]