

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.461 of 2017

Date of Order: 06.10.2017

Sukhdev Singh

....Petitioners

Versus

State of Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ruchi Sekhri, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of Certiorari for quashing order dated 21.08.2015 (P.6) passed by respondent No.3-District Magistrate (Licensing Authority), Sirsa and order dated 17.11.2016, passed by respondent No.2-Commissioner, Hisar Division, Hisar, dismissing his appeal.

In short, the petitioner was issued an Arm Licence No.1537-DM-SSA for NPB Double barrel .12 Bore gun on 09.02.1994 by the District Magistrate, Sirsa. The petitioner was involved in a criminal case registered vide FIR No.222 dated 24.08.2013 under Sections 323/285/506/34 IPC and 27/54/59 of the Arms Act at PS Sadar, Sirsa. On 24.4.2015, the Superintendent of Police, Sirsa vide letter No.214/ALC dated 24.4.2015 informed respondent No.3 that since the criminal case is pending against the petitioner in which

he has been found to have used the licensed weapon, therefore, the Arm License be cancelled in the interest of public peace and safety.

In view of aforesaid, the District Magistrate issued a show cause notice to the petitioner on 04.5.2015 under Section 17 (3)B of the Arms Act, 1959 (for short "the Act") to which the petitioner filed reply in which he has alleged that he had not used the weapon in the alleged incident and that his weapon has been duly deposited with the Station House Officer (SHO), Police Station Sadar, Sirsa and could not have used/misused the same. Thereafter, another show cause notice was sent to the SP, Sirsa for his report and the S.P, Sirsa again on 07.07.2015 reported that the aforesaid FIR No.222 dated 24.08.2013 is now under trial before the Court. On the report of the SP, Sirsa, respondent No.3-District Magistrate, Sirsa cancelled the arm licence vide order dated 21.8.2015.

Aggrieved against the said order, the petitioner preferred an appeal to the Commissioner, Hisar Division, Hisar but the same was dismissed vide order dated 17.11.2016 and thus he has approached this Court.

After notice was issued, the respondents have filed reply and during the pendency of this petition, the petitioner filed an application bearing CM No.13593 of 2017 to place on record the decision of the Court of Sh. Viren Kadyan, JMIC, Sirsa dated 07.07.2017.

Application is allowed and Annexure P.9/judgment dated 07.07.2017 passed by the JMIC, Sirsa is taken on record.

Learned counsel for the petitioner has argued that in view of the findings recorded in para 19 of the judgment, order qua cancellation of arm license of the petitioner is totally illegal.

Para 19 of the judgment read as under:

“Moreover, allegedly two cartridges were recovered from possession of the accused which was allegedly fired by the accused at the time of incident. Same were sent by the prosecution to FSL Madhuban alongwith 12 bore DBBL gun for their forensic examination and report Ex.PX1 has been tendered. A perusal of which would reveal that although the firing mechanism of DBBL gun was found in working order however, no definite opinion could be formed regarding linkage of 12 bore fired cartridges with respect to DBBL gun. Meaning thereby that no definite evidence is available on the file regarding the fact that two cartridges allegedly recovered from the possession of the accused were fired by DBL gun of accused in the alleged incident.”

On the other hand, learned counsel for the respondents has submitted that even if the petitioner has been acquitted but still he has to go before the District Magistrate for the purpose of obtaining licence again. In this regard, he has relied upon a judgment of Jharkhand High Court reported as **Jagarnath Gope Vs. State of Jharkhand and others, 2005(2) RCR (Criminal) 941.**

I have heard learned counsel for the parties and perused the record with their able assistance.

There is no dispute that the licence was issued to the petitioner after due verification. The only reason for cancellation

of the arm licence of the petitioner was his involvement in the criminal case bearing FIR No.222 dated 24.08.2013 as also the allegation that he had used the licensed weapon in the said incident by allegedly firing two shots. The S.P, Sirsa reported to the District Magistrate that the petitioner should not be allowed to carry the licence of Double barrel .12 Bore gun in the interest of peace and tranquillity and as a result thereof, the District Magistrate passed the order of cancellation. However, the Judicial Magistrate, Ist Class, Sirsa vide his order dated 07.07.2017 acquitted the petitioner and categorically recorded a finding that the two cartridges recovered from possession of the accused were sent by the prosecution to FSL Madhuban alongwith 12 bore DBBL gun for their forensic examination and as per the report of the Forensic Department, the Double barrel gun could not be linked with the fired cartridges, meaning thereby there was no definite evidence found available on the record that the two cartridges recovered from the possession of the accused were fired by the Double Barrel Gun of accused during the alleged incident.

Once, it has been held by the Judicial Court, after appraisal of evidence brought before it that the alleged cartridges possessed by the petitioner have not been used by the Double barrel gun of the petitioner in the alleged incident, therefore, the order of cancellation, which is based only upon the involvement of the petitioner in criminal case cannot be allowed to continue and as such the order of the District Magistrate as well as of Commissioner are found to be totally illegal. Insofar as the

decision in **Jagarnath Gope's case (supra)** is concerned, the facts of this case are altogether different because in the present case, finding has been recorded by the Court that the Double Barrel Gun possessed by the petitioner was not used at all, therefore, there is no threat to the public peace and tranquillity at the hands of the petitioner for which cancellation report has been sent by the Superintendent of Police, Sirsa to District Magistrate, Sirsa.

In these circumstances, present petition is allowed and the impugned orders passed by the District Magistrate as well as Commissioner, Hisar Division, Hisar are hereby set aside.

October 06, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No