

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1179 OF 2011

Bhanupratap Bajrang Singh	]	
Aged about 45 years, Occupation - Business,	]	
Residing at - B/105, Evening Star,	]	
Raheja Vihar, Powai, Mumbai - 400 072.	]	... Petitioner

Versus

1. The State of Maharashtra,	]	
Through Principal Secretary (Special),	]	
Home Department, Government of	]	
Maharashtra, Mumbai - 400 032.	]	
2. The Commissioner of Police,	]	
Through Dy. Commissioner of Police,	]	
(Arms and Ammunition Department)	]	
BrinahMumbai Police Hq., Mumbai-400001.	]	... Respondents

Mr. K. H. Giri for Petitioner.
 Mr. F. R. Shaikh, APP for State.

CORAM :- B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.
DATE :- NOVEMBER 19, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. By this petition, the Petitioner has challenged the order dated 06/11/2008 passed by the Deputy Commissioner of Police,

Brihan Mumbai (for short, 'DCP') as well as the order dated 27/10/2010 passed by the Chief Secretary (Special), Home Department, Government of Maharashtra.

2. The DCP had cancelled the license granted to the Petitioner for possessing a firearm. The Chief Secretary (Special), Home Department, had dismissed the appeal preferred by the Petitioner against the order of the DCP.

3. The brief facts leading to passing of the impugned orders are as follows :

According to the Petitioner, he had been constantly receiving threatening calls from unknown persons since the year 1999. The Petitioner had claimed to be a permanent resident of Village Bairpatti, District Pratapgarh, U.P. The Petitioner obtained firearm license in the year 2002 from the D.M., Pratapgarh, U.P. The Petitioner has stated in his petition that he had reported about obtaining the said license to the DCP, Arms and Ammunition Department, Commissioner of Police, Mumbai.

4. On 25/07/2008, the Petitioner was travelling in his car driven by his driver Mr. Akhil Shaikh. At that time, the Petitioner was carrying a revolver tied to his waist. The Petitioner was proceeding towards Vile Parle. Since he was feeling uncomfortable with the revolver tied to his waist, he removed it and kept in the compartment of the dashboard of his car. As the road was uneven, the revolver was shifting inside the compartment and therefore, the Petitioner tried to remove it from the compartment to keep it with himself. At that time, suddenly, the driver applied brakes due to which the revolver's trigger was pressed accidentally and the bullet was fired inside the car causing a hole. According to the Petitioner, he himself went to Vakola Police Station to report the incident. However, the police lodged an FIR bearing C.R.No.477 of 2008 under Section 336 of the IPC and the Petitioner's driver Akhil Shaikh was shown as the first informant.

5. The revolver was seized by the police officer. The investigation was conducted and the charge-sheet was filed in the Court of Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, vide C.C.NO.1872/PS/08.

6. The Petitioner received a show cause notice dated 10/09/2008 from the office of the Commissioner of Police, Arms and Ammunition Department, calling upon him to show cause as to why his arms license should not be cancelled. The Petitioner replied to the notice and pointed out the facts. However, by the order dated 06/11/2008, the DCP canceled his license, as mentioned earlier. It was observed in the order that since the Petitioner had not handled the weapon carefully, a bullet was fired, which showed his negligence. The DCP then recorded that the Petitioner was not entitled to possess a firearm and cancelled his arms license.

7. The Petitioner challenged the said order by preferring an appeal before the Government of Maharashtra. The said appeal was dismissed by the Appellate Authority. It was observed that an offence was registered against the Petitioner for not being careful in handling his firearm. The Appellate Authority recorded that, in his opinion, the Petitioner was not entitled to his arms license.

8. We have heard Mr. K. H. Giri, learned Counsel for the Petitioner and Mr. F. R. Shaikh, learned APP for State.

9. Mr. Giri has placed on record a copy of the Judgment and Order dated 30/03/2010 passed by the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, in C.C.No.1872/PS/08. The said copy of the Judgment is taken on record and marked 'X' for identification. By the said Judgment and Order, the learned Magistrate had acquitted the Petitioner from the charge of committing the offence punishable under Section 336 of the IPC. This order was passed at the conclusion of the trial. The learned trial Judge did not find that the Petitioner was negligent in handling his licensed firearm.

10. In view of the Judgment and Order of acquittal passed at the conclusion of the trial, in our opinion, Mr. Giri has rightly contended that a Competent Court has held that the Petitioner was not negligent in handling the firearm. Therefore, the reason given by the DCP while cancelling the firearm license of the Petitioner, does not survive as there is a finding to the contrary by a Court of competent jurisdiction, after a proper trial.

11. In this view of the matter, both the impugned orders are liable to be set aside. However, since the validity of the license is over long ago and since there was no stay to the impugned orders, there is no question of renewal of the same license. Hence, the following order.

ORDER

- (i) The impugned order dated 06/11/2008 passed by the Deputy Commissioner of Police, Brihan Mumbai as well as the other impugned order dated 27/10/2010 passed by the Chief Secretary (Special), Home Department, Government of Maharashtra, are hereby quashed and set aside.
- (ii) The Petitioner is at liberty to make a fresh application before the appropriate licensing authority for grant of license to possess a firearm.
- (iii) In case such an application is made by the Petitioner, the competent licensing authority shall decide his application within a period of three months from the date of such application, without being influenced by the earlier orders passed by the DCP and the

Appellate Authority cancelling his license.

- (iv) Rule is made absolute in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(B. P. DHARMADHIKARI, J.)