

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1180 of 2018

In

Civil Writ Jurisdiction Case No.3904 of 2018

Rajiv Raj, son of Late Bhushan Prasad, Resident of Mohalla-Chailital, P.O. Gulzarbagh, P.S.- Alamganj, Town and District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. District Magistrate, Patna.
3. Divisional Commissioner, Patna.
4. Additional District Magistrate (Arms), Patna.
5. District Arms Magistrate, Patna.
6. Senior Superintendent of Police, Patna.
7. Sub-Divisional Officer, Patna City.
8. S.H.O. Alamganj, Patna.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr.V.N. Pandey, Advocate Ms. Manisha Pandey, Advocate Ms. Shweta Pandey, Advocate
For the State	:	Mr.Saroj Kumar Sharma, A.C. to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2019

We have heard learned counsel for the appellant and the learned counsel for the State.

2. The writ petition giving rise to this controversy arises out of a request made by the appellant for grant of an



arms licence for possession of a firearm after the death of his father who was also a licence-holder.

3. The learned single Judge has dismissed the writ petition on the ground of availability of an alternative remedy to file an appeal against the order of the District Magistrate refusing to grant licence.

4. The preliminary objection with regard to the maintainability of the appeal is based on the said reasoning that the appellate forum is available and therefore the writ petition has rightly been dismissed.

5. We, however, do not agree with this submission on the peculiar facts of this case as well as two other similar cases that have been very recently dealt with by us in the case of **Mukesh Kumar Singh Vs. The State of Bihar & Ors.** (L.P.A. No.1228 of 2018, decided on 17.07.2019) and in the case of **Mahesh Prasad Vs. The State of Bihar & Ors.**, L.P.A. No.1720 of 2018, decided on 17.07.2019).

6. This case is yet another example where the appellant has been denied licence for absolutely irrelevant considerations. In the first round of litigation, when the petitioner had challenged the earlier orders passed by the licensing and the appellate authority, the ground taken for



refusal was that there was no threat perception to the petitioner. After the matter was remanded to the District Magistrate for a decision afresh, this time the District Magistrate has taken another ground inasmuch as it is stated that the petitioner is a resident of a peaceful area and therefore grant of an arms licence will create an unnecessary atmosphere of rivalry for obtaining arms licence.

7. We are unable to comprehend any such reason for refusal which can be justified under the Arms Act and the Rules. Such sort of subjective satisfaction is absolutely imaginary and based on pure surmises and conjectures which cannot be appreciated or cannot be supported on any logic. The mindset of the licensing authority in refusing to grant licence is not based on any rationale criteria as has been discussed by us in the other cases of **Mukesh Kumar Singh** (supra) and **Mahesh Prasad** (supra).

8. The same reasons therefore would squarely apply on the facts of the present case where the petitioner is seeking an arms licence under the Family Heirloom Policy in terms of Rule 25(2) of the Arms Rules, 2016 which is more in the nature of a transfer.



9. It is for this reason and keeping in view the harassment already faced by the petitioner-appellant in not having been able to succeed in getting an arms licence in 2012, that we are entertaining this appeal and we are accordingly setting aside the judgment dated 21st June, 2018, whereby the petitioner-appellant had been relegated to the alternative remedy. This is not a case where the appellant should now again be sent back for another round of litigation in the peculiar facts of this case as practically we are again now placing the petitioner back to square one where he will have to face the music before the District Magistrate.

10. We therefore keeping in view these nature of cases which have been coming before us in the recent past and are referred to herein above, would like to warn the authorities not to be unmindful of the Acts and Rules and pass orders in a blindfolded manner. We expect the District Magistrate to act more responsibly inasmuch as in the present case it is on the report of the Sub-divisional Officer that the licence has been refused without even calling for any fresh report from the police authority in order to ascertain about the antecedents of the petitioner.



11. We are therefore allowing this appeal by setting aside the impugned judgment dated 21st of June, 2018 as well as the order passed by the District Magistrate on 01.11.2017 with a direction to the District Magistrate to proceed to pass an appropriate order within three weeks from the date of presentation of a certified copy of this order in the light of the observations made herein above and in the case of **Mukesh Kumar Singh** (supra) and **Mahesh Prasad** (supra).

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

