

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24748 of 2013

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Arun Kumar Singh @ Geeta Singh @ Arun Kumar Sharma Son of Late
Brijnandan Singh, Resident of Village - Darbeshpura, P.S. Giriyak Katarisarai,
District - Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna.
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nawal Kishore Singh
For the Respondent/s : Mr.Anjani Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 27-08-2019

The present writ petition has been filed for setting aside the order dated 28.08.2006 passed by the District Magistrate, Nalanda in Arms Case No. 11 of 2003 as also for setting aside the order dated 05.02.2013/ 21.02.2013 passed by the Commissioner, Patna Division, Patna, whereby and whereunder the order dated 28.08.2006, cancelling the arms licence of the petitioner, has been upheld.

2. The brief facts of the case are that the petitioner was holding an arms license bearing License No. 4/ 1979. Subsequently, an Arms Case No. 11 of 2003 was registered on the basis of a police report dated 26.04.2003, submitted by the Officer-in-Charge, Katrisarai police station and forwarded by the Superintendent of Police, Nalanda, for cancellation of the



arms licence of the rifle belonging to the petitioner herein. Thereafter, a notice dated 03.07.2013 was issued from the court of learned District Magistrate, Nalanda to the petitioner herein, directing him to file a show cause reply as to why, on the basis of the said police report dated 26.04.2003, the arms licence of the petitioner be not cancelled. The petitioner had filed a reply stating therein that he had not misused the rifle and has also not violated the terms and conditions of the arms licence. It was further stated that the two police cases, referred to in the show cause notice, had been falsely lodged by one Shashi Bhushan Sharma on account of land dispute and in the said cases, nobody had sustained any firearm injury. Nonetheless, the District Magistrate, Nalanda by the impugned order dated 28.08.2006 cancelled the licence of the petitioner on the ground that the petitioner had misused his licensed arms for unlawful purposes resulting in lodging of two criminal cases being instituted against him and the police, upon investigation of the said cases, had found the occurrence to be true and had submitted charge sheet against the petitioner herein, hence, it was not safe for the society to leave the arms in the hand of the petitioner.

3. The petitioner had filed an appeal against the order dated 28.08.2006 passed by the District Magistrate, Nalanda in



Arms Case No. 11 of 2003, which was registered as Arms Appeal No. 262 of 2006. The Commissioner, Patna Division, Patna by the impugned order dated 05.02.2013/ 21.02.2013 has rejected the appeal of the petitioner on the ground that two criminal cases of serious nature bearing Katrisarai P.S. Case No. 144 of 2002 and Katrisarai P.S. Case No. 20 of 2003 have been lodged against the petitioner herein and upon investigation, the same have been found to be true, whereafter the police has also submitted the charge sheet against the petitioner herein. The Commissioner had also held that acquittal in a criminal case in itself is not sufficient for retaining a firearm licence and since the petitioner herein is entangled in disputes and violence has been frequently resorted to, it is not in the interest of maintaining peace to allow firearm licence to such persons.

4. The learned counsel for the petitioner has submitted that as far as the two criminal cases are concerned, the petitioner has been acquitted and at the moment, no case is pending against the petitioner in any court of law, hence the said criminal cases should not have any bearing with regard to the issue pertaining to the petitioner retaining an arms licence.

5. In this regard the learned counsel for the petitioner has referred to a judgment rendered by a co-ordinate Bench of



this Court, reported in 2008(1) PLJR 144 [**Kundan Kumar Sah v. State of Bihar & Ors.**], paragraph-4 whereof is reproduced herein below:-

“4. Having considered the matter, I find that the order cancelling arms licence cannot be supported either in law or in fact. So far as the allegation of having doubtful character of connection with Maoist extremist is concerned, except figment of imagination, there is no material to justify the same. Such wild allegations can be made by any one at any time. Moreover, when this matter was ultimately entrusted to the Officer-in-charge, Mahnar Police Station, he does not seem to have corroborated the same. In my view, such unsubstantiated allegations cannot form ground for cancelling arms licence. Coming to the question of ten cartridges having been used but not satisfactory explanation having been given, the show cause sufficiently gives an explanation which, on the face of it, appears to be bona fide explanation, the Collector does not even consider the said explanation much less rejects it on any ground. The Commissioner does not even bother to refer to it. Such a conduct in a quasi judicial proceedings cannot be countenanced by the Court. A reasonable explanation offered must be reasonably accepted unless there are cogent materials to reject the same. There being no material to reject the same, I find that in totally, the petitioner had not violated any terms and conditions of the licence issued to him.”

6. The other judgment relied upon by the learned counsel for the petitioner is the one reported in 2008(3) PLJR 186 [**Mahesh Sharma v. The State of Bihar & Ors.**],



paragraphs 2 to 6 whereof are reproduced herein below:-

“2. Petitioner filed C.W.J.C. No. 6069 of 1998 for quashing of order dated 27.5.1996 passed by the District Magistrate, Jehanabad whereby his arm licence for a rifle bearing licence no. 276/82 was cancelled on the ground of a criminal case bearing Ghoshi P.S. Case No. 148 of 1994 having been instituted against writ petitioner and some others. Petitioner has also challenged the appellate order dated 21.5.1998 passed by Commissioner, Magadh Division, Gaya. The Writ Petition was summarily dismissed by the order under appeal dated 9.2.2000.

3. It has been submitted before us that the writ petitioner has conducted himself in accordance with law since he obtained arms licence in the year 1982. Only on the ground of one solitary case filed by a co-villager with allegation that shot fired by the writ petitioner hit a part of his building should not have been made a basis for cancelling his arms licence. It has further been submitted that a perusal of the order under appeal would show that the Writ Court has accepted the allegation in the criminal case that petitioner used his rifle without any provocation as true whereas the trial of that allegation is still pending and is likely to be concluded very soon.

4. On going through the entire materials on record we find that there was material for the District Magistrate to presume that the allegation levelled against the petitioner in the F.I.R. is only prima facie true at the present stage since charge-sheet was submitted against him and trial is proceeding. But the allegation cannot be finally accepted as true and there may be substance in the defence of the petitioner that the land alleged to be Gairmajarua land is his own land and he was being prevented from making construction on his own land. The materials do not warrant an inference that the petitioner is unworthy of



holding arms licence unless the allegations are finally found true in course of the trial.

5. In view of aforesaid discussions we are of the view that the licensing authority has arrived at its conclusions without sufficient material and has erred in holding that petitioner is unfit to hold arms licence on such materials. The licensing authority was therefore, not justified in cancelling petitioner's arms licence and for the present, till the conclusion of concerned criminal case, petitioner's licence should be treated only to have been suspended by effect of the impugned order so that the petitioner may apply for revocation of the suspension order if he is acquitted in the criminal case lodged against him. We have been informed by the learned counsel for the appellant that the criminal case is at the concluding stage and is likely to be concluded soon.

6. In the facts and circumstances of the case, we accordingly allow this Writ Petition and set aside the order of licensing authority and the appellate authority which are under challenge. The matter is remitted back to the learned Collector, Jehanabad for passing a fresh order in accordance with law keeping in view the observations made above so that the arms licence of the petitioner be treated to be under suspension till conclusion of the criminal case against him. If petitioner is acquitted then he will be entitled to seek revocation of the suspension order and if he is convicted, then licensing authority may pass appropriate order in accordance with law. The appeal is allowed to the aforesaid extent. There shall be no order as to costs.”

7. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that an Arms Case No. 11 of 2003 was instituted on the basis of the written



report of the Officer-in-charge Katrisarai Police station, as forwarded by the Superintendent of Police, Nalanda, to cancel the arms licence of the petitioner on the ground that he had used his licensed arms in terrorizing the police as also against one Shashi Bhushan Sharma, for which Katrisarai P.S. Case No. 144 of 2002 had been instituted and the police, after investigation, had also filed the charge sheet. The learned District Magistrate, Nalanda by the impugned order dated 28.08.2006 had cancelled the licence of the petitioner on the ground that the petitioner had used his licensed arms for unlawful purposes resulting in lodging of two criminal cases against him, wherein, upon investigation, charges were found to be true and, accordingly, charge sheet had been filed. Moreover, the District Magistrate, Nalanda had also found that the petitioner had supplied the licensee arm to Ashok Mahto gang for unlawful purpose, hence it was not safe for the society to leave the licensed arms in the hand of the petitioner herein. This Court further finds that the two criminal cases, which have been lodged against the petitioner herein, have resulted in acquittal of the petitioner herein, though the acquittal of the petitioner herein is based upon the petitioner having been given the benefits of doubt, inasmuch as the prosecution has not been able to prove the



charges beyond all reasonable doubts. This Court also finds that there is no material on record, as far as the aforesaid two criminal cases are concerned, to show or to prove that the petitioner had used his licensed arms or caused any firearm injury to any one. It is also admitted that there is land dispute in between the petitioner and one Shashi Bhushan Sharma and the aforesaid two criminal cases were lodged at the behest of said Shri Shashi Bhushan Sharma with oblique motives and the same have culminated into a naught, inasmuch as the learned trial court has found both the cases to be false. On the contrary, it may be relevant to note that the petitioner has stated in paragraph-14 of the writ petition that Shashi Bhushan Sharma is a veteran criminal and accused in several criminal cases as also a terror of the locality and is in the habit of forcibly grabbing the lands and property of others and the only fault of the petitioner is that he has dared to stand and protect his property from being illegally and forcibly grabbed by the said Shashi Bhushan Sharma. It has been stated by the petitioner that it is a fact that the Sub-Divisional Magistrate, Rajgir had also initiated a proceeding under Section 144 of the Code of Criminal Procedure against the aforesaid Shashi Bhushan Sharma by an order dated 21.4.2003, pertaining to the land of the petitioner



herein, hence, it is essential that the licence of the petitioner be validated. This Court further finds that the law laid down by the learned Division Bench in the case of **Mahesh Sharma** (supra) fully covers the present case. As far as the judgment of the Kerala High Court passed by a learned Single Judge of the said High Court, as relied upon by the Commissioner in the appellate order, is concerned, the same does not lay down any principle of law to the effect that a simple acquittal in a criminal case would not be a bar for the statutory authorities to consider the revocation of the arms licence mandatorily in all cases. At best the said expression of the learned Single Judge in the judgment rendered in the case of **V.K. Thomas v. Revenue Board Member**, as reported in 1988 Cr. Law Journal 336 can be said to be an obiter dicta, hence is not legally binding as a precedent.

8. This Court is of the opinion that the acquittal of the petitioner in the aforesaid two cases coupled with the fact that there is a serious land dispute in between the petitioner and the aforesaid Shashi Bhushan Sharma as also the fact that the said Shashi Bhushan Sharma is said to be having a bad criminal antecedent apart from the fact that there is no material on record to show that the petitioner had supplied his firearms to Ashok Mahto gang, this Court is of the view that the order passed by



the Commissioner, Patna Division, Patna dated 05.02.2013/ 21.02.2013 is bad in law as also on fact, hence is accordingly, set aside and the matter is remanded back to the Commissioner, Patna Division, Patna to take a positive view, by applying unbiased mind, in an independent manner and pass an order afresh within a period of eight weeks from the date of receipt/ production of a copy of this order.

9. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	27.06.2019
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