

HIGH COURT OF CHHATTISGARH, BILASPURWP (Cr.) No.244 of 2016

Achche Lal Jaiswal, S/o Late Ramadhar Jaiswal, Aged 65 years, R/o
B-8, Sector 01, Devendra Nagar, Dist : Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through: Commissioner, Raipur (CG)

2. Dist. Magistrate, Dist : Raipur (CG)

---- Respondents

For Petitioner:-	Mr.Anchal Kumar Mhatrey, Advocate appears on behalf of Mr.Devershi Thakur, Advocate
For Respondents:-	Mr.Anant Bajpai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

13/05/2019

1. The petitioner was granted Arms Licence No.17/Teen/R/2002, which was renewed up to 31.12.2013. On the report of Superintendent of Police, Raipur dated 8.10.2010 that he has been charged for offence under Section 407 of the IPC registered in Police Station-Urla, a show cause notice was issued to the petitioner on 30.11.2010 to file reply till 7.12.2010. Since no reply was filed, the District Magistrate/Licensing Authority in exercise of powers conferred under Section 17(3)(b) of the Arms Act, 1959 (hereinafter called as "the Act of 1959") revoked his license on 24.12.2010, which he challenged before the appellate authority, which was dismissed on 2.7.2012, against which, the petitioner preferred writ petition being WP (Cr.) No.6 of 2013 before this Court. This Court vide order dated 5.4.2016 allowed the writ

petition and quashed the orders of the District Magistrate and the appellate Authority (Commissioner) and remitted the matter to the District Magistrate, Raipur for hearing and disposal in accordance with law after giving an opportunity of hearing to the petitioner to file reply. This time again, learned District Magistrate has maintained the order holding that offence under Section 407 of the IPC registered against the petitioner is still pending consideration and held that his revocation of license by order dated 24.12.2010 is in accordance with law, against which, this writ petition has been filed.

2. Mr.Anchal Kumar Mhatrey, learned counsel for the petitioner, would submit that mere pendency of criminal case cannot be a ground to revoke the license in exercise of powers conferred under Section 17 (3) (b) of the Act of 1959, therefore, the impugned order deserves to be quashed.
3. On the other hand, Mr.Anant Bajpai, learned Panel Lawyer for the respondent/State, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. Section 17(3)(b) of the Act of 1959 states as under:-

“17. Variation, suspension and revocation of licences.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) The Licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-

(a) xxx xxx xxx

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or”

A careful perusal of the aforesaid provision would show if the licensing authority thinks it necessary for the security of the public peace or for public safety he can suspend or revoke the licence. The order must indicate clearly that continuance of licence would be against public peace, safety and security.

6. The question for consideration would be whether the licensing authority is vested with the power under Section 17(3)(b) of the Act of 1959 to revoke/cancel the license of a public person merely on involvement in a criminal case or pendency of a criminal case.
7. To answer the aforesaid question, it would be apt to refer relevant paragraphs of **Rakesh Kumar Vs. District Magistrate, Raebareli**¹, wherein it has been held by the High Court of Allahabad that merely because of pendency of a criminal case, the arms- licenses of the holder cannot be cancelled. Relevant paras 12, 13, 14 and 15 read as under:

"12. Further, this Court in the case of Sahab Singh Vs. Commissioner Agra Region, Agra² in paragraph No. 3 held as under:-

The submission of the petitioner is That merely because of pendency of a criminal case, the arms licence of the petitioner cannot be cancelled. In support of the said submission, learned counsel for the petitioner has placed reliance on two decisions of this Court in the case of Hausla Prasad Tiwari v. State of U.P. and Ishwar @ Bhuri v. State of U.P. It has further been submitted that in view of the Full Bench decision of this Court in the cases of Balaram Singh v. State of U.P., Kailash Nath v.

1 2013 (83) Allahabad Criminal Cases 225 (HC)

2 2006 (55) Allahabad Criminal Cases 225 (HC)

State of U.P.³ as well as the Division Bench decision of this Court in the case of Sadri Ram v. District Magistrate, Azamgarh, the arms licence of the petitioner cannot be placed under suspension pending enquiry."

13. In the case of Mulayam Singh v. State of U.P.⁴, in paragraph Nos. 11 and 12 held as under:-

"Para No. 11 - The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of licence under the Arms Act, has been dealt with by a Division Bench of this Court reported in Sheo Prasad Mishra vs. District Magistrate⁵). The Division Bench relied upon the earlier decision of another Division Bench of this Court in the case of Masi Uddin vs. Commissioner, Allahabad⁶, wherein it has been held:-

"A licence may be cancelled, inter-alia, on the ground that it is "necessary for the security of public peace or for public safety, to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the licence. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of the public peace or public safety.

In the case before us also the District Magistrate has not recorded any finding that it was necessary to cancel the licence for the security of public peace or for public safety. All that he has done is to have referred to some applications and reports lodged against the petitioner. The mere fact that some reports had been lodged against the petitioner could not form basis for cancelling the licence. The order passed by the District Magistrate and that passed by the Commissioner cannot, therefore, be upheld on the basis of anything contained in Section 17(3) (b) of the Act."

Para No. 12 - Similar view has been taken by this Court in various decisions relying upon the Division Bench judgment passed in Sheo Prasad Mishra (supra). There

3 AIR 1985 All 291

4 2013 (80) Allahabad Criminal Cases 786

5 1978 Allahabad Weekly Cases 122

6 AIR 1972 All 510

is no doubt that the District Magistrate and the Commissioner i.e. administrative authorities are bound to take appropriate action in the matter of grant of licence and also its cancellation for the purpose of maintaining peace and harmony in the society. The assessment of administrative authorities with regard to grant or cancellation of licence should not be interfered in usual course by the Court in its extraordinary jurisdiction unless there is illegality or arbitrariness."

14. In the case of *Raj Kumar Verma Vs. State of U.P.*⁷, this Court in paragraph No. 3 held as under:-

"The ground for issue of show-cause notice, suspension and ultimately cancellation of the licence is that one and precisely one criminal case was registered against the petitioner. The District Magistrate has also held that the petitioner has been enlarged on bail. He has gone further to observe that if the licence remained intact, the petitioner, may disturb public peace and tranquility. The same findings have been given by the Commissioner, Unmindful of the fact that this Court is repeating the law of the land, but the deaf ears of the administrative officers do not ready to succumb the law of the land. The settled law is that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranquility shall not create the ground for the cancellation of Armed Licence. In *Ram Suchi vs. Commissioner, Devipatan Division*⁸, it was held that this law was relied upon in *Balram Singh vs. State of UP*⁹. Mere apprehension without substance is simply an opinion which has no legs to stand. Personal whims are not allowed to be reflected while acting as a public servant. "

15. Further, in the case of *C.P. Sahu v. State*¹⁰, this Court while interpreting the provisions of Section 17(3) of the Act held as under:-

"The object of the enquiry that a licensing authority may, while proceeding to consider the question as to whether or not an arms licence should be revoked or suspended, like to make, clearly is to enable the licensing authority to come to a conclusion as to whether or not the facts stated in clauses (a) to (e) of Section 17(3) exist and as

7 2013 (80) Allahabad Criminal Cases 231

8 2004 (22) LCD 1643

9 2006 (24) LCD 1359

10 1984 Allahabad Weekly Cases 145

already explained, it is not obliged to before considering that a case for revocation/suspension of license has been made out, associate the licensee in such enquiry, in this view of the matter it can safely be taken that where a licensing authority embarks upon such an enquiry it is, till then not convinced about existence of the conditions mentioned in clauses (a) to (e) of Section 17(3) , of the Act. So long as it is not so convinced no case to make an order either revoking or suspending an arms licence as contemplated by the section will be made out."

8. The aforesaid view has been reiterated by the Allahabad High Court in Hridaya Narain Tiwari v. State of U.P.¹¹, Rama Kushwaha vs. State of U.P.¹², Hiramani Singh vs. State of U.P.¹³, and Rajendra Singh vs. Commissioner, Lucknow Division, Lucknow¹⁴, wherein it has been propounded that involvement in criminal case or pendency of criminal case cannot be a ground for cancellation/revocation of firearm license.
9. In the case of Jageshwar Vs. State of U.P.¹⁵, it has been held by the High Court of Allahabad that mere involvement in criminal case cannot in any way affect the public Security or public interest.
10. In Thakur Prasad Vs. State of U.P.¹⁶, the High Court of Allahabad propounded that "Public Peace" or "Public Safety" do not mean ordinary disturbance of law and order, but the public safety

11 [2014 (4) ADJ 744 (LB)]

12 2011 (29) LCD 1045

13 2011(29)LCD 829

14 2011 (29) LCD 1041

15 [2009 (67) ACC 157]

16 [2013 (31) LCD 1460

means safety of the public at large and not safety of few persons only.

Relevant paras 9, 10 and 11 of the said case read as under:

"9. Further, while passing the impugned order also the licensing authority has not given any adequate finding that if petitioner holds the arms license then the same shall be against the public peace or public safety.

"10. Public peace" or "public safety" do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17(3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case in view of the judgment given by this Court in the case of Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998(16) LCD 905], wherein it has been held that license can not be suspended or revoked on the ground of public interest (Jan-hit) merely on the registration of an F.I.R. and pending of a criminal case.

11. Further, this Court in the case of **Habib Vs. State of U.P.**¹⁷, held as under:-

"The question as to whether mere Involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this Court in Sheo Prasad Misra Vs. District Magistrate, Basti and Ors.¹⁸, wherein the Division Bench relying upon the earlier decision in Masi Uddin v. Commissioner, Allahabad¹⁹,, found that mere involvement in criminal case cannot, in any way, affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in the above-mentioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserve to be quashed and are hereby quashed."

17 2002 ACC 783

18 1978 AWC 122

19 1972 ALJ 573

11. Reverting to the facts of the present case in the light of principle of law laid down in the aforesaid judgments (supra), it is quite vivid that the petitioner's license has been revoked/cancelled by the licensing authority simply recording a finding that it is not expedient to continue his license in the public interest as trial for offence under Section 407 of the IPC is pending consideration. No finding has been recorded that it is necessary to cancel for the security of the public peace or for public safety and even after remand of the matter, learned District Magistrate again reiterated the earlier order and has failed to consider as to whether revocation of the petitioner's license is necessary for public interest and for the security of the public peace or for public safety as mere involvement in a criminal case or pendency of a criminal case cannot be a ground under Section 17(3)(b) of the Act of 1959 to cancel the license.

12. In view of above, the impugned order dated 12.7.2016 (Annexure P/9) passed by respondent No.2/District Magistrate, Raipur is hereby quashed and the petitioner's gun license is hereby restored subject to renewal, if license period has already been expired.

13. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP (Cr.) No.244 of 2016

Petitioner

Achche Lal Jaiswal

Versus

Respondents

State of Chhattisgarh and another

(Head-note)

(English)

Arms license cannot be revoked under Section 17(3)(b) of the Arms Act, 1959 on the ground of pendency of criminal case.

(हिन्दी)

आयुध अधिनियम, 1959 की धारा 17 (3)(ख) के अधीन आपराधिक प्रकरण में लंबित रहने के आधार पर आयुध अनुज्ञप्ति को प्रतिसंहृत नहीं किया जा सकता।