

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5256 OF 2018

Mr. Sunil Purshottam Bagaria
Age- 52, Indian Inhabitant,
R/at Vidhi Apartment,
Room No. 302, Opposite
Powai Petrol Pump,
Ulhasnagar- 421 004.

..... Petitioner

VERSUS

1. State of Maharashtra
Through its Principle Secretary
Home Department,
Mantralaya, Mumbai.

2. Commissioner of Police,
Thane Division.

..... Respondents

Mr. G.S. Godbole i/b. Mr. Drupad. S. Patil , Advocate for
petitioner.

Mr. S.D. Rayrikar, AGP for Respondent No. 1 and 2.

CORAM : S. S. SHINDE

RESERVED ON : 11th APRIL, 2019

PRONOUNCED ON : 30th APRIL 2019

JUDGMENT:

1. Rule. Rule made returnable with the consent of learned counsel appearing for the parties and heard finally.

2 This writ petition takes an exception to the impugned order

dated 07th March 2017 passed by the Hon'ble Minister of State, Home Department, Government of Maharashtra and also order passed by the Commissioner of Police, Thane on 7th September 2015.

3. It is the case of the petitioner that from the year 1992, the petitioner was granted a license to carry out arms for reasons of his personal safety. Since then he has been in continuous possession of the licensed weapon. In the year 2014, during the code of conduct of Maharashtra Legislative Assembly Elections, the petitioner was asked to deposit the weapon and accordingly his licensed weapon was deposited in Vitthalwadi Police Station on 27th September 2014.

4. Thereafter, the petitioner received a show cause notice on 19.12.2014 as to why the petitioner's license should not be cancelled. Pursuant to the said show cause notice, the Commissioner of Police, Thane was pleased to suspend the license of the petitioner under section 17 (3) (b) of the Arms Act, under the pretext that, the petitioner has become ill-eligible to carry the said licensed weapon vide order dated 7th September 2015. Being aggrieved by the said order, the petitioner filed the appeal. The said appeal was dismissed by the State Minister (Home), Maharashtra State. Being aggrieved by the said order the present petition is filed.

5. Learned Counsel appearing for the petitioner submits that, the petitioner asked to show cause, as to why his license bearing no. 895587 should not be cancelled as per the provisions of Section 17(3)(b) of the Arms Act. In the said show cause notice, the respondent no. 2 has relied

upon the case registered in the year 2007 in the Vile Parle Police Station under sections 342, 323, 324, 304, 506 (2) and 34 of Indian Penal Code and 3, 25 and 27 of Arms Act. It is submitted that, the petitioner filed the reply to the said show cause notice. However, without accepting the explanation given by the petitioner, the Commissioner suspended the license of the petitioner. It is submitted that, both the authorities below did not take into consideration the order passed by the Judicial Special Metropolitan Magistrate, Special Court, Mumbai. By the said order the Muddemal property i.e. weapon of the petitioner which was seized by the investigating officer in CR No. 217/2007 was directed to be returned to the petitioner on executing bond of Rs. 1,00,000/- provided with the property shall be produced by the petitioner as and when required during the trial for the purpose of identification. It is submitted that, pursuant to the order passed by the Judicial Special Metropolitan Magistrate, Mumbai, the petitioner received the weapon on executing bond of Rs. 1,00,000/- and also on fulfilling other procedural formalities as stated in the order passed by the Judicial Special Metropolitan Magistrate, Mumbai. Therefore, Learned counsel for the petitioner submits that petition may be allowed.

6. On the other hand, the Learned AGP appearing for the respondents relying upon the reply filed by respondents and also reasons assigned in the impugned orders, submits that the petition may be rejected.

7. I have given careful consideration to the submissions made by the Learned counsel for the petitioner and the Learned AGP for the State. With their assistance, I have perused pleadings and the grounds taken in

the petition and annexures thereto, the reasons assigned in the impugned orders and also the reply filed by the respondents. Admittedly, the Judicial Special Metropolitan Magistrate, Mumbai while passing the order in CR No. 217/2007 registered against the petitioner directed the Senior Inspector of Police, Vile Parle Police Station, Mumbai to return the Muddemal property seized during the investigation on certain conditions which are stated in the order. The order passed by the Magistrate, reads thus:-

“The Muddemal property seized by the Investigating Officer in C.R. No. 217/07 i.e. one revolver with 34 rounds be returned to the Applicant, on executing Bond of Rs. 1,00,000/- (Rs. One Lacs only) provided that the property shall be produced by the applicant as and when required during trial for the purpose of identification. The investigating officer is also directed to prepare photographs of the Muddemal property at the expenses of Applicant and prepare Panchnama to that effect and also obtain signatures of applicant and accused on Panchnama and photographs, which will be part and parcel of the record and may be used as evidence for identification.

You are therefore, directed to comply with the above mentioned order.”

8. It appears that, while passing the impugned orders, the respondents were not made aware of the above mentioned order passed by the Judicial Special Metropolitan Magistrate, Mumbai. Once the aforesaid order is passed by the Court of competent jurisdiction, it was not proper on the part of the Commissioner of Police, Thane to pass the impugned order in same C.R. No. 217/2007 registered against the petitioner in ignorance of the order passed by the Court. In that view of the matter, the impugned

orders are required to be quashed and set aside and are accordingly quashed and set aside.

9. Rule is accordingly made absolute in above terms. The Writ Petition is allowed to the aforesaid extent.

10. In case the concerned Police Station/Respondents desirous to seek modification of the aforesaid order passed by the learned Judicial Special Metropolitan Magistrate, it may be open for the concerned officer to move the said Court in accordance with law and in case relevant procedure permits such an exercise.

11. Needless to observe that, the petitioner shall continue to abide by the aforesaid order passed by the learned Judicial Special Metropolitan Magistrate, as long as the same is in force/operation.

[S.S. SHINDE, J.]