

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5536 of 2016

Arising Out of PS. Case No.-112 Year-2005 Thana- SAHARSA District- Saharsa

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Damodar Kumar Jhunjunwala S/o Sri Radhakrishna Jhunjunwala Resident
of C/o Krishna Silk, D.N. Singh Road, P.O. and P.S. Town, District -
Bhagalpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Atul Bihari Pandey, Adv, Mr. Gautam
Kejriwal, Adv, Mr. Alok Kumar Jha, Adv &
Aishwarya Riti, Adv

For the Opposite Party/s : Mr.Nirmal Kr. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 05-02-2020

Heard learned counsel for the parties.

2. This criminal miscellaneous petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 09.07.2014 passed by Chief Judicial Magistrate, Saharsa, in Saharsa Sadar P.S. Case No. 112 of 2005 by which the learned court took cognizance against petitioner under Sections 109, 419, 420, 467, 468, 471, 120(B) of IPC and under Section 30 of the Arms Act.

3. FIR was instituted on self statement recorded by



Officer-in-charge, Saharsa Sadar, Police Station, giving rise to Saharsa Sadar PS Case No. 112 of 2005 dated 26.04.2005 instituted under Sections 109, 419, 420, 467, 468, 471, 120(B) of IPC and under Section 30 of the Arms Act.

4. In his self statement Informant (Officer-in-Charge of P.S) has stated that in compliance of letter No. 11026/76/2004 dated 29.10.2004 issued from Ministry of Home Affairs, Govt. of India, he deputed Balkrishna ASI, to the Office of District Arms Magistrate, to obtain the list of Arms Licence Holder and on physical verification of the address of seven Arms Licencee, same were found to be false. It further revealed that these persons obtained Arms licence on the basis of forged and fabricated documents and political influence. The arms licensing authority had granted them Arms licence in utter violation of Section 13(2) of the Arms Act which mandates that only after physical verification of names and address by the local police arms licence shall be issued, however, it is further stated that if licensing authority does not receive police verification report within specified period, he has discretion to grant arms license. Police in its verification report informs about applicant's character and his relation with naxals, his physical fitness and whether any proceeding under Section 107/109, 111/113 of



Cr.P.C was initiated or not and also sends its recommendation, however, the licensing authority without awaiting said report granted license to the FIR named accused on extraneous grounds. It is further alleged that hariom kumar of Mokama who is accused in many criminal cases and is brother of Suraj Bhan Singh (M.P) was granted arms licence. FIR named accused were not eligible for grant of license yet they were granted Arms license. Applicant should reside on given address for at least three years to be eligible for grant of Arms license. In the FIR it was further stated that some more persons have been granted Arms license in violation of Section 13(2) of the Arms Act and their cases are also under investigation.

5. On the basis of aforesaid facts it is apparent that above named accused have committed offence under Section 30 of the Arms Act and under Section 109, 419, 420, 467, 468, 471, 120B of IPC.

6. The letter dated 29.10.2004 issued in the name of Director, Security, Ministry of Home Affairs, Govt. of India, New Delhi, upon which enquiry was made reads as follows:-

“29th October, 2004

Sub: Streamlining the procedure of issuing Arms license.

Sir,

I am directed to state that large scale issue of licenses has been reported in certain States. In many cases the licences have been issued to non-resident without proper verification and in some cases the licenses have not been issued by the



licensing authority. I order to plug the loopholes in the existing procedure of issuing Arms Licence that have come to light, it has been decided to take the steps indicated in the succeeding paragraphs.

All arms licences issued between 1994-98 from J&K and between September 1998 to February 2001 from Ferojpur district (Punjab) and submitted at the office of District Collector all over the country for re-registration, reissuance or for any other purpose should be verified to ascertain the bonafide of the licenses and genuineness of the license documents.

Under the provisions of Section 13(2A) the licensing authority can make such other enquiry as it considers necessary. Necessary instruction may be issued to the District Magistrate to conduct police verification at the place of his stay during the last 3 years, preceding the date of application.

Arms license for the categories of weapons specified in Schedule-II of the Arms Rules 1962, for which D.M. is the licensing authority and not the officers subordinate to him. It may be stated that there is no provision in the Arms Act, 1959, for delegation of such authority to others for granting arms license.

The licensing authority in the states should be advised to furnish return on the licenses issued on a quarterly basis to the State Home Department for scrutiny on quarterly basis to the State Home Department for scrutiny/Secretary of the Home Department.

A very strict departmental action should be taken wherever any instances of lapse in issuance of arms license comes to the notice of the State Government.

The records of all the licenses issued by the licensing authority in the States should be computerized and a mechanism should be put in the place for early warning wherever there is an unprecedented spur in issue of arms license in a particular district.

Action taken in the matters may kindly be intimated to the Ministry.

Yours Faithfully
Director, Security.”

7. The name of petitioner figured in this case during investigation on 05.06.2005 when Office of the District Arms Magistrate, furnished name of petitioner who was granted arms licence without police verification under Section 13(2) of Arms Act and I.O. has found that he tried to locate the local address given by petitioner as Naya Bazaar, Saharsa, on 07.06.2005 but



found said address to be false.

8. Petitioner had applied for grant of arms licence in the year-2003 and when no police report was received within specified period he was granted arms licence and NOC on 24.02.2004, by the licensing authority who has recorded in the file that he personally knows petitioner for last more than three years and as such he is ordering to grant him Arms licence on his application.

9. District Magistrate cum Licensing Authority in his reply dated 02.04.2006 to the questionnaire given by the I.O. has stated that on receipt of application for grant of arms licence verification report was called for from local police station and thereafter reminder was also sent but no police verification report was submitted as such in view of Section 13(2A) of the Arms Act, he has discretion to grant arms license and accordingly, he ordered issuance of arms license as per prevailing rules and there was no violation of any of the provisions of Arms Act or Rules.

10. Section 13(2A) of the Arms Act reads follows:-

“13.(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same: Provided that where the officer in charge of the nearest police station does not send his report on the application



within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]”

11. It is submitted on behalf of petitioner that petitioner was granted arms licence under the provisions of Arms Act and Rules framed thereunder and no illegality or irregularity was committed by the licensing authority while issuing arms license. Petitioner had neither made any misrepresentation nor there was any suppression of fact. Information disclosed in application were true and correct. No forged document was submitted by the petitioner along with application form. No case of cheating or forgery is made out against the petitioner. Petitioner had not violated any terms and conditions of license as such no offence under Section 30 of the Arms Act is made out against him. Section 30 of the Arms Act, 1959 reads as follows:-

“30. Punishment for contravention of licence or rule.—Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to 4[six months], or with fine which may extend to 5[two thousand] rupees, or with both.”

12. Petitioner had applied for grant of arms license in the year 2003 and when no police report was received by the licensing authority within specified period he was issued arms license and NOC on 24.02.2004 by the licensing authority which is permissible under Section 13(2A) of the Arms Act and



as such no irregularity was committed while issuing arms license or NOC to the petitioner.

13. It is further submitted that although petitioner was granted NOC and arms license for purchase of arm but for the reasons as stated in his petition while surrendering his arms license and NOC he did not purchase any arms and applied for cancellation of his arms license on 04.07.2004 and petitioner surrendered his arms license on 20.10.2004 without purchase of any arms on said arms license and NOC.

14. FIR was instituted on 26.04.2005 and much prior thereto petitioner had surrendered his arms licence still he was made accused on the ground that the address of the petitioner as mentioned in his application was found to be false, however, it is an admitted position that the permanent address which he had given in his application was correct and true. There was no dispute with respect to identity and permanent address of petitioner which was verified by the police and same was found to be correct.

15. It is submitted on behalf of petitioner that there is no material or evidence found against petitioner in course of investigation in order to constitute offence under Section 30 of the Arms Act or of committing cheating or forgery and as such



no offence of cheating and forgery under IPC is made out against the petitioner.

16. No *prima facie* case is made out against the petitioner, as such order taking cognizance under Section 30 of Arms Act and different sections of IPC is bad in law and fit to be quashed.

17. Altogether 17 persons were made accused in this case among whom 7 were FIR named accused and 10 unnamed accused including the District Magistrate, Saharsa, who is the licensing authority and investigation was conducted against all of them, however, altogether 15 persons including petitioner have been chargesheeted in this case and first chargesheet was submitted against accused Om Prakash Tiwary on 09.07.2005 and against remaining 14 accused including petitioner supplementary chargesheet was submitted on 13.04.2006. One accused Abhishek Tripathy his identity could not be verified or ascertained and other accused D.M. Saharsa against whom accusation was not found to be true and as such, he was not sent up for the trial and thereafter learned CJM took cognizance against 15 accused persons on 09.07.2014, including petitioner.

18. It is submitted that in the FIR main allegations were levelled against the licensing authority i.e. District Magistrate,



Saharsa, against whom allegations were made that he granted license in violation of section 13(2) of the Arms Act for extraneous conditions but accusation against him has not been found to be true yet petitioner has been chargesheeted although he had no role in grant of Arms licence and there is no allegation of giving any false information or forged document along with his application for grant of Arms license and moreover, without purchasing any Arms she had surrendered his Arms license much before institution of FIR.

19. Learned counsel for the petitioner has relied upon judgment of this Court in the case of **Uday Narain Ojha Vs. State of Bihar** since reported in **2008 (1)PLJR 647**, in which this Court has held that application for grant of licence can be made from anywhere where person is residing and it is not necessary that the same should be his permanent address:-

“6. From the above provision of Rule 51 (b), it would be seen that the application has to be made to the licensing authority as far as possible having jurisdiction in respect of the place where he ordinarily resides or has his occupation. This expression, the Legislature have used, in contradistinction to permanent residence. The Legislature were fully aware that a person may be a permanent resident of a particular place but he could ordinarily reside at another place for various reasons including business, service or occupation. It is where he would ordinarily reside he would keep his arms and not necessarily at his



permanent residence. Similarly, if we are to refer to various clauses of Form A, which is the form for making application for arms licence, it would be seen that in the said application, the applicant has to give his present address and the nearest Police Station and his permanent address and the nearest Police Station. This provision clearly shows that his present address and permanent address may be two distinct and different places and may be different districts or even different States within India. If Legislature intended that the licence can only be granted by the licensing authority within whose jurisdiction the applicant permanently resided then the Legislature would have so spoken. If the Legislature have not so spoken rather the statutory intendment being otherwise, it is not open to the District Magistrate to opine contrary to the provisions.

7. Thus, in my view, rejecting application for grant of arms licence only on the ground that the petitioner was not permanent resident of the district of the licensing authority is wholly without jurisdiction and is de hors the provisions of Arms Act and the Rules made thereunder. It is a non est consideration. In such a situation, I am left with no alternative but to direct the District Magistrate, Rohtas to reconsider the application of the petitioner for grant of arms licence and pass appropriate orders. He shall be obliged to communicate the order to the petitioner as well. All this must be done within two months on production of a copy of this order before the District Magistrate. With the aforesaid direction, the writ application is allowed.

20. Learned counsel for the petitioner has further relied upon a judgment and order passed by this Court in the case of **Abhimanyu Singh Vs State of Bihar & Ors** since reported in



2008 (2) PLJR 342, in which it has been held that if police fails to submit its report within specified time the licensing authority is not bound to wait for police report and can grant arms license under section 13(2) of the Arms Act, 1959.

21. Learned counsel for the petitioner has further relied upon a judgment and order of Allahabad High Court in the case of Ganesh Chandra Bhatt Vs. D.M. Almora since reported in AIR 1993 ALL 291, where the hon'ble court has held that arms license of non prohibited arms should be granted as a rule and refusal should be exception:-

“79. In the circumstances, the writ petition is allowed and a mandamus is Issued to the Respondents to issue an arms licence to the Petitioner for which he has applied within two weeks of production of a certified copy of this judgment before the Respondent No. 1. A general mandamus is also issued to all concerned authorities that whenever any application for licence under the Arms Act is made the same must be processed and decided within three months, and the normal rule must be grant of the licence In the case of non-prohibited firearms, and refusal should be the exception and for strong reasons to be recorded in writing after giving opportunity of hearing to the applicant, and such reasons for rejection must be communicated to the applicant within three months of the application. The licence should also be normally not restricted to the district or State except for special reasons to be recorded in writing and communicated to the applicant.”

22. Learned counsel for the petitioner has further relied



upon a judgment and order of Hon'ble Apex Court in the case of **Indian Oil Corporation Vs. NEPC** since reported in **(2006) 6 SCC 736** and in the case of **Krishika Lulla Vs Shyam V. Devkatta & Ors** since reported in **(2016(2) SCC 521** and also in the case of **Md. Ibrahim and Ors Vs. State of Bihar & Ors** since reported in **2009(4) PLJR SC 99**, to support his contention that no offence of cheating or forgery is made out against petitioner and necessary ingredients in order to constitute said offences are completely lacking in present case.

23. Learned counsel for the petitioner has further relied upon a judgment and order of Hon'ble Apex Court in the case of **Madhavrao Jiwajirao Scindia & Ors Vs. Samhabjirao Chandrojirao Angre & Ors** since reported in **(1988) 1 SCC 692**, :-

“31. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding



even though it may be at a preliminary stage.”

24. For the reasons as stated above continuance of present proceeding against petitioner will amount to an abuse of the process of Court, as such in the interest of justice the order taking cognizance dated 09.07.2014 passed by Chief Judicial Magistrate, Saharsa, in Saharsa Sadar P.S. Case No. 112 of 2005 as well as whole criminal proceeding as far as same relates to petitioner is quashed.

The criminal miscellaneous petition is allowed.

(S. Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
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