

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 33095 of 2019
Date of decision : 27.02.2020**

Dharamdev Arya

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J. (Oral)

The present petition under Article 226/227 of the Constitution of India is for issuance of writ in the nature of certiorari for quashing the order dated 20.06.2018 passed by respondent No. 4 (P-1) and order dated 04.01.2019 passed by respondent No. 3 (P-2).

The petitioner was issued Arms licence No. 202-FBD-Aug-92 and since last 26 years, he has never misused the fire arms. Vide order dated 20.06.2018, the license of the petitioner was cancelled on account of registration of criminal cases against him.

Feeling aggrieved against order dated 20.06.2018, the petitioner preferred an appeal before respondent No. 3, who vide its order dated 04.01.2019 dismissed the appeal of the petitioner (P-2).

Learned counsel for the petitioner contends that the action of the respondent Nos. 3 and 4 in cancelling the arms license of the petitioner is

arbitrary, discriminatory and against the principles of natural justice.

On notice, a reply has been filed on respondent Nos. 1 to 5 taking a stand that since the petitioner was found involved in the F.I.R's, his arms licence has rightly been not renewed. The details of the F.I.R's is reproduced below:-

<i>Sr. No.</i>	<i>F.I.R No.</i>	<i>Dated</i>	<i>Sections</i>	<i>Police Station</i>	<i>Present Position</i>
1	323	08/12/88	323,325,341,34 IPC	Old FBD	Acquitted vide order dated 04.07.1991 by extending the benefit of doubt
2	71	12/08/08	323,341,506,34 IPC	Bhupani	Cancelled vide Zimni dated 22.10.2008
3	203	26.05.2016	323,324,307,506 IPC	Bhupani	During the investigation, the appellant was found innocent vide zimni dated 26.07.2016 but the trial against the nephews of the appellant is pending in which they have charge-sheeted u/s 307 IPC

It has been further stated in the reply that petitioner was served show cause notice dated 17.05.2018 and he gave his reply, which was not found satisfactory. Moreover, the family of the petitioner is involved in violent quarrel. The record of the petitioner does not inspire confidence in his antecedents and suitability for being entrusted a firearm.

The question for consideration before this Court that once on the date of revoking the arms licence of the petitioner, if there was no criminal case pending against him, can the respondents revoke the arms licence of the petitioner.

It is not in dispute that mere pendency of criminal case is not a valid ground for disqualifying a person from holding a license.

The relevant provision that governs the issue of award of cancellation of the licence is set out through Section 17(3), which is reproduced as under:-

“(a) If the licensing authority is satisfied that the holder of the

licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in hispossession or carrying any Arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence underthis Act; or

(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

(c) If the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) If any of the conditions of the licence has been contravened; or

(e) If the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.”

Clause 17(3)(a) deals with unsoundness and unfitness to hold a licence and clause (b) refers to the security of the public peace or public safety as the relevant criterion for suspension or revocation of licence. Clause (c) refers to obtaining a licence on a suppression of material information on the basis of wrong information which, in this case, related to the fact that the petitioner was not seen to be a resident of the place which had been disclosed.

In the present case, the respondents have admitted that on the date of passing of impugned orders, there was no criminal case pending against the petitioner. The cancellation of arms license is to be examined as per Section 17(3)(b). It is not a case of the respondents while cancelling his

arms license that he would be a threat to public peace or public safety. Even

though the issue of law and order would be predominant concern of the licensing authority but after acquittal, this aspect has not been gone into by the authorities, therefore, invoking Section 17(3) (b) of the Arms Act, the arms license issued to the petitioner could not be cancelled. It is not a case of the respondents that the petitioner is a hard core criminal.

Reference at this stage can be made to judgment of Madhya Pradesh High Court in a case of ***Mahendra Singh Bhaduria vs. State of M.P and others, 2009(5) RCR (Civil) 431*** wherein the arms license was suspended on the ground of pendency of criminal case against the accused and it was held that it was not a valid ground for impounding or cancelling or refusing to grant arms license. It is only where accused of a serious crime or hardened crime, such action can be taken.

Further Hon'ble Allahabad High Court has examined a case of ***Kamal Prakash @ Kamal Nath @ Suddan vs. Commissioner Kanpur Divn and others, 2011(6) R.C.R (Criminal) 2437*** wherein the arms license was cancelled on the ground of petitioner's involvement in the offence under Section 304 IPC. It was held that cancellation or revocation of license on allegation of mere involvement of license holder in a criminal case not proper. Respondent was directed to renew fire arm license of the petitioner. In paragraph 5, it has been held as under:-

*“5. This Court considered the same issue in the case of **Bhagat Singh vs. State of U.P 2004(48) ACC 478**. This Court in paragraph 6 of the aforesaid judgment observed herein under:-*

“It is settled law that the license cannot be cancelled or revoked on allegation of mere involvement of the license holder in a criminal case. The writ petition is pending since 1985. More than 18 year

have passed since the lodging of the criminal case under Sections 107/116 of the Criminal Procedure Code against the petitioner in which he has been acquitted. There is no other crime case pending against the petitioner. The license of the petitioner was cancelled only on the ground of pendency of the criminal case alleging his involvement, without giving him reasonable opportunity of being heard. This was in violation of principles of natural justice and cannot be sustained.”

Hon'ble Madhya Pradesh High Court has examined a case of ***Badshah alias Taj Mohammad vs. State of M.P and another, 2008(1) RCR (Crl) 558***. In paragraph 10, it has been observed as under:-

“10. From the aforesaid discussion, it is clear that there is no finding in the aforesaid criminal cases that the firearm owned by the petitioner under valid licence was ever used or misused by the petitioner. No threat is stated to have been extended by the petitioner on the strength of the said firearm. There is no specific provision in Arms Act or elsewhere that no licence is to be issued when criminal cases are pending against the applicant. There is further no material on record to infer that the petitioner has caused obstruction to public safety. This being so, the revocation of the petitioner’s licence on the ground of public safety is not sustainable in law.”

This Court in a case of ***Mahender Singh vs. State of Haryana and others, 2011 (3) PLR 693*** has held that without a definite finding relating to threat to such peace or safety in the manner contemplated under Section 17 (3) (h). Licence cannot be suspended or revoked.

In the facts of the present case, three cases were registered against the petitioner but he has been acquitted in one cases and in two cases,

F.I.R's against him were cancelled. This fact has been admitted by the respondents in their reply. It is not the case of the respondents that he has ever misused the arms license issued to him, therefore, by invoking Section 17(3)(b) and by applying the ratio of law laid down by various High Courts mentioned above, the respondents could not by invoking Section 17(3)(b) cancelled the arms license of the petitioner.

In view of the aforesaid facts, the writ petition succeeds and is allowed. Accordingly, orders dated 20.06.2018 (P-1) and 04.01.2019 (P-2) are hereby quashed.

(RITU BAHRI)
JUDGE

27.02.2020

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No