

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.82 of 2021

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Arun Kumar Gupta S/o late Tej Narayan Prasad Sah Resident of Village-
Sarsaula Khurd, P.S.-Sheohar, District-Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate Sheohar.
2. The Commissioner, Tirhut Division, Muzaffarpur, District-Muzaffarpur
3. The District Magistrate, Sheohar, District-Sheohar.
4. The Superintendent of Police, Sheohar, District-Sheohar.
5. The Sub Divisional officer, Sheohar, District-Sheohar.
6. The District Arms Magistrate, Sheohar, District-Sheohar.
7. The Officer-in-Charge, Sheohar Police Station, Distt.-Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mahendra Thakur, Advocate
For the Respondent/s	:	Mr. Anil Kumar, AC to Standing Counsel-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 30-09-2022

The present writ petition has been filed for quashing the order dated 29.05.2017 passed by the District Magistrate, Sheohar i.e. the respondent no. 3, whereby and whereunder the arms license of the petitioner has been cancelled, for quashing the order dated 08.09.2018, passed by the respondent no. 3 in Arms Appeal Case No. 7 of 2018, dismissing the case of the petitioner and for setting aside the order dated 20.03.2020 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur i.e. the respondent no. 2, in Arms Appeal Case No. 31 of 2019, by which the Appeal filed by the petitioner has been



rejected.

2. The brief facts of the case according to the petitioner are that the petitioner had applied for license of double barrel gun in the year 2002, whereupon he was granted arms license bearing Arms License No. 3 of 2002 and then he had purchased arms. The said arms license of the petitioner had subsequently stood renewed till 28.12.2019. It is the further case of the petitioner that all of a sudden on 19.01.2008, an F.I.R. was registered at the behest of a *Pattidar* of the petitioner namely Surya Narayan Prasad against him and his family members under Sections 341/ 323/342/379/34 of the Indian Penal Code vide Sheohar P.S. Case No. 5 of 2008, wherein it had been alleged that the petitioner and others, with the help of 10 fishermen, took away fish forcibly from the pond of the informant of the said case, worth 12,000/-. The police, upon investigation had submitted Charge-Sheet under Sections 341/ 323/342/379/34 of the IPC in the said case, whereafter, the learned Magistrate had taken cognizance, framed charges and had proceeded with the trial, which ultimately resulted in conviction of the petitioner and he was sentenced to undergo two years simple imprisonment U/s. 379 and other allied sections of the IPC, by a judgment dated 08.03.2017. The



petitioner had then challenged the said judgment of conviction dated 08.03.2017, by filing an appeal before the learned Court of Sessions Judge, Sheohar bearing Criminal Appeal No. 8 of 2017, however, the same was dismissed by a judgment dated 18.07.2017, against which the petitioner preferred a revision petition before this Hon'ble bearing Criminal Revision No. 842 of 2017, however, the same has stood disposed of by a judgment dated 20.11.2017, passed by a coordinate Bench of this Court, though without any interference in the judgment of conviction rendered by the Ld. court below, but considering the fact that nine years have passed since the lodging of the FIR, the sentence awarded to the petitioner was modified to the period already undergone and the fine had been enhanced to a sum of Rs. 15,000/-, out of which 80% was directed to be paid to the informant.

3. It is the further case of the petitioner that only on account of conviction of the petitioner by the Ld. Trial Court, by a judgment dated 08.03.2017, the respondent no. 3, without issuance of any show cause notice to the petitioner, had *suo moto* cancelled the arms license of the petitioner vide Memo dated 29.05.2017.

4. It is also the case of the petitioner that immediately upon passing of the aforesaid order dated 20.11.2007, by a



coordinate Bench of this Court, in Criminal Revision No. 842 of 2017, the petitioner had filed an application before the respondent no. 3 for reconsideration of his case for re-validating the arms license, whereupon a case bearing Arms Appeal No. 7 of 2018 was registered by the respondent No. 3, however, the same was dismissed by an order dated 08.09.2018, only on the ground that the petitioner has not been acquitted by the Hon'ble High Court. The petitioner had then challenged the said order dated 08.09.2018 before the Divisional Commissioner, Tirhut Division, Muzaffarpur i.e. the respondent no. 2, in Arms Appeal Case No. 31 of 2019, however, the same has also stood rejected, by an order dated 20.03.2020, on the ground that since the license of the petitioner was cancelled upon his conviction by the learned trial court, it is apparent that the petitioner had violated the provisions of the Arms Act, hence the order of the District Magistrate, Sheohar cancelling the arms license of the petitioner does not suffer from any illegality.

5. The learned counsel for the petitioner has submitted that admittedly the petitioner has not been convicted in the aforesaid criminal case under the provisions of the Arms Act nor he has been found to have misused his arms at any point of time nor he has ever violated any provisions of the Arms Act, 1959/



the Arms Rules, 2016, nonetheless, the arms license of the petitioner has been cancelled, only on the ground of his conviction by the Ld. trial court vide judgment dated 08.3.2017, which has ultimately stood modified by a coordinate Bench of this Court vide Order dated 20.11.2017. It is also submitted that the petitioner is having threat perception on account of him being actively involved in politics and the District-Sheohar being a naxalite affected area, thus it is imperative to restore the arms license of the petitioner. The learned counsel for the petitioner has lastly relied upon a judgment rendered by this Court in the case of *Arun Kumar Singh vs. The State of Bihar and others*, reported in **2019 (5) B.L.J 440**, to submit that in case of absence of there being any material to suggest use of fire arms in an occurrence leading to lodging of an FIR, against the license holder, mere pendency of a criminal case or conviction of the license holder in such cases would not be a ground for cancellation of the arms license.

6. Per contra, the learned counsel for the respondent-State, by referring to the counter affidavit filed in the present case, has submitted that an FIR was lodged against the petitioner and others bearing Sheohar P.S. Case No. 5 of 2008, under sections 341, 323, 342, 379/34 of the Indian Penal Code,



wherein the petitioner was convicted and awarded sentence of two years simple interest by the learned court of S.D.J.M., Sheohar vide judgment dated 08.03.2017, which has been upheld by a Judgment dated 18.07.2017, passed in Criminal Appeal No. 74 of 2017, hence the license of the petitioner was cancelled by an order dated 29.05.2017, passed by the respondent No. 3, U/s. 17(3) (b) of the Arms Act, 1959, for maintaining public peace and public safety. It is also pointed out that the revision petition bearing Criminal Revision No. 842 of 2017, filed by the petitioner before this Hon'ble Court, has also stood disposed off vide judgment dated 20.11.2017, passed by a coordinate Bench of this Court wherein also the conviction of the petitioner has been upheld, hence the arms license of the petitioner has rightly been cancelled. Consequently, it is submitted that the order dated 08.09.2018, passed by the respondent no. 3 in Arms Appeal Case No. 7 of 2018 as also the order dated 20.03.2020, passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur, in Arms Appeal Case No. 31 of 2019, do not suffer from any infirmity.

7. I have heard the learned counsel for the parties and gone through the materials on record from which I find that the basis for cancellation of the arms license of the petitioner, vide



order dated 29.05.2017 passed by the respondent no. 3, is conviction of the petitioner by the Ld. court of Sub-Divisional Judicial Magistrate, Sheohar vide judgment dated 08.03.2017 and the petitioner being sentenced therein to undergo two years simple imprisonment, which has stood affirmed till this Hon'ble court by a judgment dated 20.11.2017 passed in Criminal Revision No. 842 of 2017, whereby, though the conviction of the petitioner has not been interfered with, however, considering the passage of about nine years since the lodging of the F.I.R., the sentence awarded to the petitioner has been modified to the period already undergone and the fine imposed has been enhanced. This Court finds that the aforesaid FIR in question was lodged against the petitioner and others for stealing fish from the pond of the informant of the said case under section 379 of the Indian Penal Code and other allied sections of the IPC, leading to the petitioner being sentenced to two years simple imprisonment. The sole ground for cancellation of license of the petitioner, as is apparent from the order of the District Magistrate, Sheohar dated 29.05.2017 is conviction of the petitioner and him being sentenced to undergo two years simple imprisonment, in connection with the aforesaid criminal case, but the fact remains that the said criminal case pertains to theft of fish and neither



any allegation has been levelled against the petitioner of using fire arm nor he has been convicted under the provisions of the Arms Act, hence this Court is of the view that conviction of the petitioner in a theft case, wherein there is no whisper about use of fire arm by the petitioner, cannot form basis for cancellation of the arms license of the petitioner inasmuch as there is no material to show that the petitioner had engaged in misuse of fire arm. Reference, in this connection, be had to a judgment rendered by the learned Division Bench of this Court in the case of *Chandan Kumar Yadav vs. The State of Bihar & others*, reported in **2013(2) PLJR 605**.

8. Another aspect of the matter is that the District Magistrate, Sheohar has cancelled the arms license of the petitioner vide order dated 29.05.2017, without either issuing a show cause notice to the petitioner or without affording an opportunity to the petitioner to put forth his defence resulting in violation of the principles of natural justice, hence on this score as well, the impugned orders dated 29.05.2017, 08.09.2018 and 20.03.2020 stand vitiated in the eyes of law.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the order dated 29.05.2017 issued by the District



Magistrate, Sheohar is unsustainable in the eyes of law, hence is quashed. For the same reason, the order dated 08.09.2018 passed by the District Magistrate, Sheohar in Arms Appeal No. 7 of 2018 also stands vitiated in the eyes of law, hence is also set aside. Consequently, the appellate order dated 20.03.2020 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur in Arms Appeal Case No. 31 of 2019, has got no legs to stand, hence is also quashed.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	21.09.2022
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