

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2963 OF 2021

Dinesh Ramdulare Jaiswal

...Petitioner

Versus

- 1) The Minister of State for Home (City)
Govt. of Maharashtra, Mantralaya, Mumbai;
- 2) Additional Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai;
- 3) The Depputy Commissioner of Police,
Mumbai;
- 4) Sr.Inspector of Police,
Chembur police Station, Mumbai. ...Respondents

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Mr.Pramod Bhosle i/b. Devika Nigade, Advocate for the Petitioner.
Mrs.P.P. Shinde, APP for Resondent – State.

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***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : JULY 21, 2022

P.C. :

- 1 Heard learned counsel for the parties.
- 2 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the respondent – State.

3 By this petition, the petitioner has impugned the order dated 17th November, 2016, passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai, by which the petitioner's application seeking arms licence was rejected, as well as the order dated 25th September, 2017, passed by the respondent no.1–The Minister of State for Home (City) Govt. of Maharashtra by which the said order passed by the respondent no.3 was confirmed and as such the petitioner's appeal was dismissed.

4 Learned counsel for the petitioner submits that the petitioner was issued a licence for his weapon i.e. .32 Board Revolver in the year 1994. Learned counsel relied on the said licence which is at Exhibit–C on page 19 of the petition. He submits that the said licence issued in favour of the petitioner was renewed from time to time till 2016, and that on 21st April, 2016, when the petitioner applied for renewal of his licence, the petitioner was issued a show–cause notice dated 11th August, 2016, by the respondent no.3–The Deputy Commissioner of Police, Mumbai, to show cause why the said weapon licence should not be cancelled. The said show cause notice further recorded that the petitioner was careless with respect to the said weapon, as two FIRs were registered against the petitioner and that the said criminal cases were sub-judice. The said show cause notice is at Exhibit–C on page nos.19 to 29 of the

petition. Learned counsel for the petitioner submits that the petitioner replied to the show cause notice, however, the respondent no.3–The Deputy Commissioner of Police, Mumbai, without considering the reply of the petitioner passed the impugned order dated 17th November, 2016, and, as such, cancelled the weapon licence issued to the petitioner. He submits that even the Hon'ble Minister before whom the petitioner had filed an Appeal *vide* order dated 25th September, 2018, dismissed the said Appeal and as such confirmed the order passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai.

5 The grievance of the learned counsel for the petitioner is that when the impugned order dated 25th September, 2018, was passed by the Hon'ble Minister, the Hon'ble Minister did not take into account or consider the material fact, that the petitioner was acquitted from all the offences in 2012 and 2017, with which he was charged. He further submits that even when the respondent no.3–Deputy Commissioner of Police passed the impugned order dated 17th November, 2016, the said respondent no.2–Deputy Commissioner of Police, failed to consider, that the petitioner was acquitted in one of the two cases in 2012. He submits that the impugned order be quashed and set aside, for non consideration of the acquittal of the

petitioner from the said cases and the matter be remitted back to the appropriate authority for fresh consideration. He further submits that the Hon'ble Minister also failed to take into consideration the report of the Chembur police station dated 25th September, 2017, by which the Hon'ble Minister was informed of the acquittal of the petitioner in both the cases. Learned Counsel placed reliance on the said report of the Chembur police station which is at Exhibit-L, at page 57 of the petition.

5 Learned APP opposes the petition.

6 It is not in dispute, that the petitioner was issued a licence for his weapon i.e. point 32 Board Revolver in the year 1994, and, that the said licence was renewed from time to time. It appears that on 21st April, 2016, the petitioner applied for renewal of the said licence which was to expire, when respondent no.3-The Deputy Commissioner of Police, Mumbai, issued a show cause notice to the petitioner dated 11th August, 2016. By the said show cause notice, the petitioner was asked to show cause as to why the licence for the weapon should not be cancelled. It was also recorded that the petitioner was careless with respect to the said weapon, as two FIR's were registered against the petitioner. The cases referred to in the show cause notice are

C.R.No.49 of 2016, registered with the Chembur Police Station for the alleged offences punishable under Sections 135 and 150 of the Indian Electricity Act, and, C.R.No.2018 of 2003, registered with the Sahar Air Port Police Station, for the alleged offences punishable under Section 8(c) alongwith Section 161 of the Air Craft Act and Section 30 of the Indian Penal Code (IPC).

7 The said show cause notice was replied to by the petitioner on 23rd August, 2016. It was informed that the case registered with the Sahar Police Station, Mumbai, had resulted in the acquittal of the petitioner, and, that the case under the Electricity Act was pending. It appears that the respondent no. 3–The Deputy Commissioner of Police, Mumbai, passed the impugned order dated 17th November, 2016, and, as such, cancelled the weapon licence of the petitioner.

8 The said order dated 17th November, 2016, passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai, was challenged by the petitioner in Appeal before the Additional Chief Secretary, Government of Maharashtra i.e. respondent no.2. The said Appeal was dismissed by the Hon'ble Minister, Home Department *vide* order dated 25th

September, 2018, and confirmed the order passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai.

9 It is not in dispute that when the petitioner's appeal was pending before the Hon'ble Minister Home Department, the Chembur police station had informed the said authority of the acquittal of the petitioner in both the CR's i.e. C.R. registered with the Airport Police Station, Mumbai, as well as the Chembur Police Station, Mumbai. It is also not in dispute that the petitioner was acquitted from both the cases i.e. in the Electricity Act *vide* judgment and order dated 9th September, 2017, and, in the Air Craft Act case *vide* judgment and order dated 27th March, 2012. Admittedly, none of the acquittals have been challenged by the State in Appeal.

10 A perusal of the impugned order dated 25th September, 2018, shows that although the Hon'ble Minister, Home Department has mentioned the two cases filed against the petitioner, however, there is no reflection in the order, as to whether the Hon'ble Minister Home Department was aware of the acquittal of the petitioner from the said cases. Similarly, in the order passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai, dated

17th November, 2016, there is no reflection of the fact, that the petitioner was acquitted from one case at the relevant time i.e. in the Air Craft Act.

11 Considering the aforesaid, we deem it appropriate to quash and set aside the impugned order dated 25th September, 2018, passed by the respondent no.1–The Minister of State for Home (City) Government of Maharashtra, and, the order dated 17th November, 2016, passed by the respondent no.3–The Deputy Commissioner of Police, Mumbai, and, remit the matter back for fresh consideration. Before the Deputy Commissioner of Police, Mumbai. Accordingly, we restore the original application filed by the petitioner before the respondent no.3–The Deputy Commissioner of Police, Mumbai, back to its original file.

12 The respondent no.3–The Deputy Commissioner of Police, Mumbai, to decide the said application afresh, on its own merits, in accordance with law. Needless to state, that if an adverse order is passed, it is open for the petitioner to file an Appeal before the Hon'ble Minister.

13 All contentions of the parties are kept open. Needless to state, that the respondent no.3–The Deputy Commissioner of Police, Mumbai, shall

decide the application afresh, uninfluenced by the earlier orders dated 17th December, 2016 or 25th September, 2018, passed by the Hon'ble Minister. The respondent no.3–The Deputy Commissioner of Police, Mumbai to decide the said application, afresh, as expeditiously as possible, and, in any event, within eight weeks from the date of receipt of this order.

14 Needless to state, that it is also open for the petitioner to file certified copies of the judgment and orders of acquittal before the respondent no.3–The Deputy Commissioner of Police, Mumbai,

15 Petition is allowed and Rule is made absolute on the aforesaid terms. Writ Petition is disposed of accordingly.

16 All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.