

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.8512 of 2017

Reserved on: 18.4.2022

Decided on: 29.4.2022

Preetwant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Navreet Singh advocate for
Mr. Vikram Anand, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JAISHREE THAKUR J.

1. The petitioner has approached this court for issuance of an appropriate writ especially in the nature of certiorari for setting aside orders dated 31.05.2016 passed by respondent No. 4 and order dated 20.07.2016 passed by respondent No. 2 and further to issue a writ in the nature of mandamus directing respondent No. 4 to revoke the cancellation of his arms licence and renew the same.

2. In brief, the facts are that the petitioner was issued an arms licence under the Arms Act, 1959 on 20.12.2000. His licence was valid up to 19.12.2012 and allowed him to be in possession of 12 bore DBBL Gun and 32 bore revolver. This licence was further extended until 25.7.2013. On 01.03.2004, an FIR regarding matrimonial dispute was registered by the wife of the petitioner against him under Sections 498-A and 406 IPC. On 27.10.2011 another FIR No. 122 dated 27.10.2011 was got registered by his wife under Sections 307 IPC and 27 of the Arms Act, 1959 at Police Station Dharamkot, District Moga with the allegation that Mohan Singh father-in-law had fired upon her with his gun on the

asking of the present petitioner. The petitioner was honorably acquitted by the Additional Sessions Judge Moga on 13.5.2014 on the ground that no case was made out against him. An application was then preferred by the estranged wife of the petitioner before the District Magistrate Kapurthala stating that the petitioner had threatened her with his licenced gun, because of which he was served a show cause notice by the office of District Magistrate, Kapurthala. Reply was submitted to the show cause notice on 1.11.2012 stating therein that the arms are in the possession of the authorised dealer as the same were taken into possession by the police by way of recovery memo in FIR No. 122 dated 27.10.2011 under Section 307 IPC and 27 of the Arms Act and therefore, he could not have threatened her with his licenced weapon in 2012. On 02.03.2013, the SHO Police Station Dhilwan recommended the cancellation of the fire arms licence of the petitioner. The report was recommended by the Deputy Superintendent of Police, Sub-Division, Bholath to Deputy Commissioner, Kapurthala. Pursuant thereto, the office of the District Magistrate, Kapurthala issued a notice for cancellation of arms licence to the petitioner on 02.11.2015. In the meanwhile, vide order dated 21.5.2015, the Additional Sessions Judge, Moga ordered for the release of the original arms licence of the petitioner. The arms licence was cancelled by the District Magistrate, Kapurthala by order dated 31.5.2016 on the basis of the recommendation made and the petitioner was asked to sell his arms along with cartridges within a period of 30 days and deposit the arms licence with the office of the District Magistrate. The appeal filed before the Commissioner, Jalandhar Division, Jalandhar was dismissed on 20.7.2016 after noticing all facts but holding that an appeal was not maintainable. The petitioner had also presented an application seeking extension of time to sell his weapon as the same were deposited in the gun house. Hence, this writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the impugned orders are not sustainable on the ground that the District Magistrate has failed to consider that the petitioner had been honorably acquitted in proceedings initiated under Section 307 IPC. It is submitted that there were no allegations in the said FIR that the petitioner had fired upon the complainant and allegations were against his father Mohan Singh. It is argued that the mere pendency of proceedings in an FIR filed under sections 498A and 406 IPC could not be made the basis for cancellation of his arms licence. It is further argued that the Commissioner, Jalandhar Division has failed to exercise the jurisdiction conferred upon him under Rule 5 (1) of the Arms Rule 1962, which clearly stipulates that any order passed by the District Magistrate is appealable before the Appellate Authority, who would be the Commissioner of the Division.

4. On notice being issued, reply has been filed by the Additional District Magistrate-cum-Licensing Authority, Kapurthala on behalf of the respondents. Counsel for the respondent-State submits that there is no infirmity in the orders passed. It is stated that an application was received from the petitioner's wife Palwinder Kaur, alleging that an attempt had been made to kill her and on which application a report was sought from the Senior Superintendent of Police, Kapurthala. As per the report received, it was recommended that the petitioner's arms licence be cancelled. Reply to the show cause notice was not found satisfactory. The licence was cancelled and the appeal filed before the Commissioner, Jalandhar Division was also dismissed.

5. I have heard the counsel for the parties and with their assistance have perused the pleading of the case.

6. It is an admitted fact that the petitioner herein has been acquitted in the FIR No. 122 dated 27.10.2011 registered under Section 307 IPC. In the FIR, there was an allegation against his father Mohan Singh of having shot a fire, with no such allegation of the petitioner having misused his fire arm. FIR No.7 dated 1.3.2004 registered under Section 498A/406 IPC arose out of a matrimonial dispute and the provisions of Arms Act have not been invoked against the petitioner.

7. A perusal of the impugned order dated 31.5.2016 of the District Magistrate does not reflect that he has recorded any reason for revoking the arms licence. A perusal of the provisions of Section 17 of the Act shows that the licence of the licensee can be revoked, *inter alia*, for violation of the terms and conditions of the licence or if it is found that he has suppressed any material at the time of obtaining of the arms licence. In fact, no reason has been recorded at all other than the fact that Senior Superintendent of Police has recommended the cancellation. The Licensing Authority is required to form an independent opinion based on the facts as presented.

8. The petitioner preferred an appeal before the Appellate Authority who declined to entertain the matter on the ground of jurisdiction, totally ignoring Rule 5 (1) of the Arms Rule 1962 which prescribes that any order passed by the District Magistrate is appealable before the Appellate Authority, who would be the Commissioner of the Division. Therefore, by virtue of the said Rule, the order was appealable before the Commissioner, who erroneously declined to adjudicate the same.

9. This court while taking into consideration that the writ petition is pending in this Court since 2017 and almost six years have elapsed, proposes to

dispose of this writ petition instead of remanding the same to the Commissioner to decide the appeal having jurisdiction to do so.

10. It is held that the District Magistrate in utter disregard to the provisions of the Act has cancelled the licence without giving any cogent reason for the same. Section 17(5) of the Arms Act enjoins a statutory duty upon the competent authority to record reasons in writing for revoking a licence. There is no consideration as to whether issuing a licence is likely to cause a breach of public peace and/or endanger public safety. The petitioner stands acquitted in FIR No. 11 dated 27.10.2011 under Section 307 IPC and in the FIR No.7 dated 1.3.2004 under Section 498A, 406 IPC, provisions of the Arms Act have not been invoked. It is also settled law that mere pendency of an FIR cannot be made the basis of cancellation of a licence. In this regard, reference may be made to judgements reported as **Brijesh Kumar Vs State of Haryana 2021 (4) RCR(Civil) 47, Balwinder Singh v. State of Punjab and others, 2019 (4) RCR (Criminal) 960 and Sadhu Singh v. State of Punjab and others, 2018 (4) RCR (Criminal) 567.**

11. Consequently, in view of the fact that the petitioner stands acquitted in FIR under Section 307 IPC and the trial Court itself has released the arms licence, the impugned orders being unsustainable are hereby set aside. The writ petition stands allowed. The competent authority/District Magistrate, is directed to renew the arm licence of the petitioner within a period of one month from the date of receipt of a certified copy of this order.

(JAISHREE THAKUR)
JUDGE

April 29, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No