

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

CWP No.31962 of 2019

Decided on:04.05.2022

Jagdish Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Bhupender Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR J. (ORAL)

1. The petitioner has approached this court for issuance of an appropriate writ especially in the nature of certiorari for setting aside order dated 30.10.2018 passed by respondent No.2 whereby arms licence of the petitioner has been cancelled and order dated 18.07.2019 passed by respondent No.5 vide which appeal preferred by the petitioner stands dismissed and further to issue a writ in the nature of mandamus directing respondents to revoke cancellation of arms licence of the petitioner.

2. In brief, the facts are that the petitioner was issued an arms licence bearing No.955/DM/KL. The petitioner had applied for renewal of the said arms licence and during the process of renewal, a report sought from the concerned police station revealed that FIR No.815 dated 18.11.2013 under Sections 148, 149, 452, 323, 325, 506 IPC has been registered against the petitioner and others at the instance of one Pitamber. On the basis of said report, respondent No.2 issued show cause notice to the petitioner, which was duly replied by the petitioner by stating that he stood acquitted in the aforesaid FIR vid judgment dated 08.03.2018 passed by the Judicial Magistrate, Karnal.

However, being dissatisfied with the reply, respondent No.2 had sought comments of respondent No.4 in the matter, who vide letter dated 06.10.2018 recommended for cancellation of the arms licence of the petitioner. The petitioner also appeared personally before respondent No.2 and apprised of the order dated 08.03.2018, however, vide order dated 30.10.2018, respondent No.2 ordered cancellation of the arms licence of the petitioner while assigning reasons that the petitioner has been acquitted by giving benefit of doubt and therefore, holding of arms licence by the petitioner is not in public interest. Appeal preferred by the petitioner before respondent No.5 against the aforesaid order also stood dismissed. 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 acquitted in proceedings initiated under FIR No.815 dated 18.11.2013 for commission of offences under Sections 148, 149, 452, 323, 325, 506 IPC. It is submitted that there were no allegations in the said FIR that the petitioner had fired upon the complainant and allegations were of giving beatings to the complainant and his brother owing to land dispute. It is argued that the mere pendency of proceedings in an FIR filed under Sections 148, 149, 452, 323, 325, 506 IPC could not be made the basis for cancellation of his arms licence. He relies upon the judgment passed by a Coordinate Bench in CWP No.19478 of 2016 titled as *Balwinder Singh Vs. State of Punjab and others* decided on 25.01.2018 wherein while observing that the petitioner therein had never used his .12 bore gun, which he had carried with the licence granted under the Act, in any of the criminal cases in which he was involved, suspension of the arms licence of the petitioner by the respondent has been held patently illegal.

4. On notice being issued, reply has been filed by the District Magistrate, Karnal on behalf of the respondents No.1 to 3 & 5. Counsel for the respondent-State submits that there is no infirmity in the orders passed. It is stated that a report was sought from the Superintendent of Police, Karnal, who reported that FIR No.815 dated 18.11.2013 has been registered against the petitioner and recommended for cancellation of his arms licence. Reply to the show cause notice was not found satisfactory. The licence was cancelled and the appeal filed before the Divisional Commissioner, Karnal Division, Karnal 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.815 dated 18.11.2013 under Sections 148, 149, 452, 323, 325, 506 IPC. In the FIR, there was an allegation of giving beatings by the petitioner and others to the complainant and his brother on account of some property dispute and the provisions of Arms Act have not been invoked against the petitioner.

7. A perusal of the impugned order dated 30.10.2018 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 can be revoked, *inter alia*, for violation of the terms and conditions of the licence or if it is found that the holder has suppressed any material at the time of obtaining of the arms licence or for the security of the public peace or for public safety. In fact, no reason has been recorded at all other than the fact that Superintendent of Police has recommended the cancellation. The Licensing Authority is required to form an independent opinion based on the facts as presented.

8. 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.815 dated 18.11.2013 under Sections 148, 149, 452, 323, 325, 506 IPC and 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 judgemnts 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.**

9. Consequently, in view of the fact that the petitioner stands acquitted in FIR No.815 dated 18.11.2013 under Sections 148, 149, 452, 323, 325, 506 IPC and there is no reasoning assigned by the licensing authority that the petitioner has ever misused the arms in the case involved or there is a threat to public peace or public safety, 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

May 04, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No