

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63786 of 2021**

Arising Out of PS. Case No.-112 Year-2005 Thana- SAHARSA SADAR District- Saharsa

Deepak Kumar Bhuwania, Son of Shri Sitaram Bhuwania Resident of Village
- M.P.D. Road, Near Goshala, P.S.- Kotwali, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate

For the Opposite Party/s : Mr. Abhay Kumar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT**

Date : 11-10-2023

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. The learned counsel for the petitioner submits that the present quashing application has been filed seeking quashing of the entire proceedings of Saharsa P.S. Case No. 112 of 2005, G.R. No. 500 of 2005 including the order dated 09.07.2014 passed by the learned Judicial Magistrate, 1st Class, Saharsa, whereby cognizance of offences under Sections 109, 419, 420, 467, 468, 471 and 120(B) of the Indian Penal Code read with Section 30 of the Arms Act, 1959 has been taken.

3. The learned counsel for the petitioner submits



that from perusal of the allegation as alleged in the F.I.R., it would manifest that, *prima facie*, no offence is made out against the petitioner. It is next submitted that a person identically situated like the petitioner was also made an accused in the present F.I.R. namely, Damodar Kumar Jhunjhunwala, who had approached this Court by filing Criminal Miscellaneous No. 5536 of 2016 for getting the order of cognizance dated 09.07.2014 quashed. It is next submitted that this Court after hearing the learned counsel for the parties was pleased to quash the order of cognizance dated 09.07.2014 by an order dated 05.02.2020 in Criminal Miscellaneous No. 5536 of 2016. It is further submitted that the case of the present petitioner is similar to that of Damodar Kumar Jhunjhunwala with one difference that is both petitioner and Damodar Kumar Jhunjhunwala were issued arms license by the Arms Magistrate, but Damodar Kumar Jhunjhunwala did not purchase the arms whereas the petitioner purchased the arms in pursuance of the license but the moment the F.I.R. came to be instituted and an instruction was issued to surrender the license, both petitioner and Damodar Kumar Jhunjhunwala surrendered



their license and the petitioner also surrendered his arms.

4. The learned counsel for the petitioner thus submits that in this background the facts of the present case be appreciated.

5. The learned counsel next submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the informant alleges that in compliance of Letter No. 11026/76/2004 dated 29.10.2004 issued from the Ministry of Home Affairs, Government of India, he deputed Bal Krishna an ASI, to the Office of District Arms Magistrate, to obtain the list of arms license holder and on physical verification of the address of the seven arms licensee were found to be false. It is next alleged that these persons obtained arms license based on forged and fabricated documents based on political influence. It is next alleged that the Arms Licensing Authority had granted them arms license in utter violation of Section 13(2) of the Arms Act which mandates that only after physical verification of names and address by the local police, arms license shall be issued, however, it is further alleged that if Licensing Authority does not receive police verification report within



specified period, he has discretion to grant arms license. It is next alleged that police in its verification report informs about the applicant's character and his relations with Naxals, his physical fitness and whether any proceedings under Section 107, 109, 111 and 113 of the Cr.P.C. has been initiated against the applicant or not and based on the same sends its recommendation, however, the Licensing Authority without waiting for said report granted license to the F.I.R. named accused persons including the petitioner on extraneous consideration. It is next alleged that Hariom Kumar of Mokama, who is accused in many criminal cases and is brother of Suraj Bhan Singh (M.P.) was granted arms license, it is further alleged that F.I.R. named accused persons were not eligible for grant of license yet they were granted arms license, further, the applicant should reside on given address for at least three years to be eligible for grant of arms license, accordingly, the F.I.R. was instituted.

6. The learned counsel for the petitioner submits that the only allegation alleged against the petitioner is that the arms license which was granted to him was in absence of police report and on verification his residential address



from where he had applied for license was found to be false. The learned counsel submits that petitioner is a businessman and is a permanent resident of Bhagalpur and is engaged in business of trading of silk fabrics and yarns for last several years at Bhagalpur, the petitioner in connection of his business used to travel down to various places within the state and outside and also had to visit various districts in the State of Bihar which included even places with poor law and order condition, the petitioner often and frequently visited Saharsha which was a good and fertile market for his product since, the petitioner had to visit Saharsha frequently, as such, considering the law and order situation which had arisen there at the relevant point of time, the petitioner felt insecure as he was staying in a flat of one of his dealers namely, Ashok Chetan (Chowdhary) in Railway Colony, Dalan Chowk, Saharsa on rent. The learned counsel submits that since petitioner is a resident of Bhagalpur and was staying at Saharsha in connection of his business, as such, he had applied for arms license from Saharsha in pursuance whereof the arms license was granted to him. The learned counsel next



submits whether the police submitted report or not that was not the concern of the petitioner, it is next submitted that, as far as, allegation as alleged in the F.I.R. that the address from which the petitioner had applied for the gun license was found false is not correct as during the course of investigation it has not transpired that petitioner was not staying at the house from where the had applied for the arms license rather what was recorded in the case diary was that petitioner was not found at the place from where he had applied for the arms license when it is not in dispute that during the course of investigation it transpired that petitioner is a resident of Bhagalpur. It is next submitted that since petitioner in connection of his business was staying at Saharsa for a long-time and on account of law and order situation which was prevailing he had applied for the license, but after the controversy arose he surrendered the arms license including the arms and left the house from where he had applied for the arms license and thus during the course of investigation it was recorded that petitioner was not found at the place from where he had applied for the arms license. The learned counsel next submits that



even the Arms Act and Rules does not prohibit issuance of arms license to a person on the ground that he is not staying at his permanent residence.

7. The learned counsel next relies on an order of this Court in the case of *Uday Narain Ojha vs. State of Bihar* reported in *2008 (1) PLJR 647* wherein it has been held that application for grant license can be made from anywhere where person is residing and it is not necessary that the same should be his permanent address. The learned counsel next relies on the order dated 05.02.2020 in Criminal Miscellaneous No. 5536 of 2016 in Damodar Kumar Jhunhunwala vs. the State of Bihar to submit that the case of the petitioner if not akin is similar to the case of Damodar Kumar Jhunhunwala and since this Court in the case of Damodar Kumar Jhunhunwala was pleased to quash the order of cognizance which the petitioner is seeking quashing of in the present application, the Court should interfere.

8. The learned A.P.P. for the State opposes the quashing application.

9. Considering the submissions and taking into



consideration the order dated 05.02.2020 in Criminal Miscellaneous No. 5536 of 2016, the entire proceedings of Saharsa P.S. Case No. 112 of 2005, G.R. No. 500 of 2005 registered under Sections 109, 419, 420, 467, 468, 471 and 120(B) of the Indian Penal Code read with Section 30 of the Arms Act, is hereby quashed.

10. The supplementary counter affidavit filed on behalf of the petitioner is taken on record.

11. The quashing application is thus allowed.

(Satyavrat Verma, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.10.2023
Transmission Date	N/A

