

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1930 of 2019

Anil Kumar Verma

Vs

The State of West Bengal.

For the Petitioner : Mr. Phiroze Edulji.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

Heard on : 24.04.2023

Judgment on : 17.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being G.R. Case No. 637/2014 arising out of Bowbazar Police Station Case No. 209 of 2014 dated 10.05.2014 under Section 188 of the Indian Penal Code, 1860 read with Section 30 of the Arms Act, 1959 presently pending before the Learned 12th Metropolitan Magistrate, Calcutta and Order dated 09.04.2019 passed by the Leaned 12th Metropolitan Magistrate, Calcutta, thereby rejecting the petitioner's prayer for discharge.
2. The petitioner's case is that the petitioner is aged about 67 years and is a law abiding citizen of India. He is a permanent resident of Hastings Court, 96 Garden Reach Road, Flat – 6A, Tower – C, Kolkata – 700023 and is a businessman by profession.
3. The petitioner is a holder of a licensed arm, being one 12 Bore D.B.B.L. Gun No. 322057 by Krupp, issued to him in 1988 under License No. 1399/Mar/88/Cal by the Reserve Forest, Arms Act Department, Kolkata. In the said license, the petitioner's initial residential address was recorded as 10/1 Princep Street, Kolkata – 700023.
4. In the year 2008 the petitioner moved his permanent residence to Hastings Court, 96, Garden Reach Road, Flat – 6A, Tower – C, Kolkata – 700023. By a letter dated 26.02.2008, addressed to the Deputy Commissioner of Police, Arms Act Department, Kolkata, the petitioner

informed about the change in his permanent residential address and that he would henceforth keep his licensed arm in the abovementioned changed address. The petitioner also requested the said addressee to make the necessary changes in the records of the Department pertaining to the change in his residential address. The Department duly inserted the said changes in the license and the amendment in the license was endorsed on 09.09.2008 and on the same date D.C., R.F. (A.A.D.) duly signed on the license.

5. The petitioner's arm's license is required to be renewed periodically and the petitioner has done so in order to continue to be in lawful possession of the said arm.
6. That in order to renew his arm's license, the petitioner deposited both licensed arm as well as his arm's license on 15.02.2014. The petitioner was given a receipt dated 15.02.2014 against such deposit of his licensed arm. The arm's license of petitioner was thereupon renewed on 21.02.2014, the validity of which expired on 13.03.2017 and was again renewed and is now valid till 13.03.2020.
7. That in the year 2014, the Election Commission of India issued a notice to all the licensed arms holders to deposit their arms under Sections 17/21 of the Arm's Act, 1959. In compliance with such direction given by the Election Commission of India, the petitioner once again deposited his licensed arm on 05.04.2014. The petitioner was given a receipt dated 05.04.2014 against the deposit of his licensed arm.

8. The petitioner then got to know that someone from the Arms Act Department, Kolkata had enquired for him at his previous residence, i.e. at 10/1 Princep Street, Kolkata – 700023. Consequently, the petitioner sent his representative to the Arms Act Department, Kolkata, who was informed by the Department that an enquiry was made with respect to updating the records pertaining to the petitioner's arm's license. Thereafter, on 27.08.2014, the petitioner sent a letter to the Deputy Commissioner of Police, Arm's Act Department, Kolkata, apprising him of the above departmental enquiry and reminding him once again that he had moved his permanent residence from Princep Street to Hastings Court. Further the petitioner once again requested the addressee to make the necessary changes in the records with the Department.
9. In the meantime on 30.04.2014, the Deputy Commissioner of Police, Reserve Forest, Arms Act Department, Kolkata issued a letter bearing Memo No. 22/O.C.,A.A.D to the Officer-in-Charge of all the Police Stations under Kolkata Police informing that despite the direction of the Election Commission of India upon the licensed arms holder to deposit their licensed arms, many of such licensed arms holder had not complied with such direction. On this account, the addressees were requested to send a list of such defaulting licensees to the O.C., A.A.D. of Lalbazar Police Station.
10. In pursuance of the letter dated 30.04.2014 of the Deputy Commissioner of Police, Reserve Forest, Arms Act Department, on 10.05.2014, the

Office-In-Charge of the Bowbazar Police Station sent a list of the licensed arms holders who had failed to deposit their licensed arms in compliance with the direction of the Election Commission of India. The name of the petitioner also featured on the said list at Entry No. 17. It is submitted that despite the requests made by the petitioner to the Deputy Commissioner of Police, Arms Act Department, Kolkata to make the necessary changes in the Department's records pertaining to the petitioner's changed residential address, the list of defaulters dated 10.05.2014 unequivocally indicates that the Department made no effort at updating their records pertaining to the change in the petitioner's residential address although the necessary changes were endorsed in the petitioner's license in 2008 itself. Consequently, on the basis of the list of defaulters dated 10.05.2014, the Officer-in-charge of the Bowbazar Police Station (ASI Dipankar Gorain) filed a suo motu complaint against the petitioner and 29 others for investigation, registered as Bowbazar Police Station Case No. 209 dated 10.05.2014 under section 188 of the Indian Penal Code, 1860 read with Section 30 of the Arms Act, 1959 alleging *inter alia* that the accused persons had, in defiance of the direction to the Election Commission of India, failed to deposit their licensed arms.

11. Upon completion of investigation, Charge Sheet No. 343 of 2014 dated 29.11.2014 was submitted before the Learned Additional Chief Metropolitan Magistrate, Court – II, Calcutta against the petitioner and

29 others under Section 188 of the Indian Penal Code, 1860 read with Section 30 of the Arms Act, 1959.

12. That after the FIR was registered on 10.05.2014 against the petitioner and when the investigation was being carried out with respect to the allegations leveled against the petitioner, the petitioner informed the Deputy Commissioner of Police, Arms Act Department, Kolkata by a letter dated 27.08.2014 that he had moved his residence from Princep Street to Hastings Court and requested the necessary changes be made in the records with the Department. However, without paying due regard to such request nor having recorded such correspondence, the investigating agency submitted the Charge Sheet against the petitioner.
13. On 05.02.2015, the Learned Additional Chief Metropolitan Magistrate, Court-II, Calcutta was pleased to take cognizance of the instant case and assigned the case to the Learned 12th Metropolitan Magistrate, Calcutta for its speedy disposal.
14. On 06.08.2016, the Learned 12th Metropolitan Magistrate, Calcutta was pleased to issue warrant of arrest against all the accused persons named in First Information Report and the Charge Sheet.
15. On 04.09.2017, the petitioner filed an application for discharge.
16. That pursuant to an order dated 29.01.2019 passed by this Hon'ble Court, the Learned 12th Metropolitan Magistrate, Calcutta heard the petitioner's application for discharge filed on 04.09.2017 and by an order

dated 09.04.2019, the Learned 12th Metropolitan Magistrate was pleased to reject the petitioner's application for discharge.

17. **Mr. Phiroze Edulji, learned counsel for the petitioner** has submitted that the order dated 09.04.2019 suffers from severe illegality inasmuch as the same does not confer with the established principles of criminal jurisprudence and has been passed without any application of judicial mind.
18. That it is trite law that while deciding the application for discharge under Section 227 of the Code of Criminal Procedure, 1973, the court has to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
19. The defaulter's list dated 10.05.2014, discloses nothing but the lackadaisical attitude of the Department and indicates that despite being reminded so many times, the Department did not bother to take any action with respect to changing the petitioner's residential address in its record, in spite of renewing the license on at least 3 occasions with the new address.
20. That the Learned Magistrate, while deciding the application for discharge, not only failed to assess the lackadaisical attitude of the Department, but completely overlooked the impropriety of the Department.
21. That, in compliance with the direction of the Election Commission of India, the petitioner deposited his licensed arm on 05.04.2014. However,

the Officer-in-Charge of the Bowbazar Police Station, despite holding an enquiry in this regard, failed to take account of such deposit of the petitioner's licensed arm and the change in the petitioner's residential address and inaccurately and illogically mentioned the petitioner's name in the list of defaulters dated 10.05.2014. This goes on to show how erroneously the enquiry was conducted by the Department/Officer-In-Charge of the Bowbazar Police Station.

22. That at the time of hearing the application for discharge, the receipt against the deposit of the petitioner's licensed arm dated 05.04.2014 was placed on record before the Learned 12th Metropolitan Magistrate, Calcutta. However, the Learned 12th Metropolitan Magistrate, Calcutta neglected to take note of the same and, therefore, failed to observe that the petitioner had duly complied with the direction of the Election Commission of India.
23. **That in the list of defaulters dated 10.05.2014 appended to the FIR, it is mentioned that the petitioner is a resident of 10/1 Princep Street, Kolkata - 700023, whereas in the Charge Sheet, it is mentioned that the petitioner is a resident of Hastings Court, 96 Garden Reach Road, Flat 6A, Tower C, Kolkata - 700023.** This shows that the Department and the police were well-apprised of the change of petitioner's residential address, yet failed to update the records pertaining to his arm's license. It is all the more unfortunate that even the Learned Magistrate failed to take this into consideration.

24. That in order to constitute the offence under Section 188 of the Indian Penal Code, 1860, it has to be established that : (i) there was a lawful order promulgated by a public servant empowered to promulgated it; (ii) the accused must have knowledge of the promulgation such order; (iii) disobedience of such order by the accused; (iv) such disobedience tends to or has certain consequences such as annoyance, obstruction, injury, etc. In the instant case, the petitioner deposited his licensed arm in compliance with the direction of the Election Commission of India. Therefore, there arises no question of disobeying the order or any consequences ensuing therefrom.
25. That the Learned Magistrate, not having taken into consideration that the petitioner had deposited his licensed arm, completely failed to assess that no prima facie case was made out against the petitioner under Section 188 of the Indian Penal Code, 1860 or Section 30 of the Arms Act, 1959.
26. That order dated 09.04.2019 is otherwise bad in law and is liable to be set aside and the impugned proceeding is vexatious and frivolous and is liable to be quashed.
27. **Mr. Sudip Ghosh, learned counsel for the state has submitted a report dated 23.03.2023 as called for, along with the case diary.**
28. **Mr. Edulji** has relied upon the Judgment of the Supreme Court in **C. Muniappan and Ors. Vs State of T.N.D.K. Rajendran and Ors.,**

Criminal Appeal Nos. 127-130 of 2008 with Cri. A. Nos. 1632-1634 of 2010, on 30.08.2010, held:-

“25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

26. Learned counsel for the appellants have submitted that no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, entire prosecution case falls.

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 Cr.PC falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no `Rasta Roko

Andolan'. Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned."

29. From the materials on record the following facts are before this Court:-

- I. The petitioner in February 2008 informed the DCP, AAD about the change of address, where he would be keeping his licensed arms in future. Copy of the letter at page 35 to the revisional application bears seal of receipt of the department.
- II. At page 36 is the copy of license showing the change of address duly endorsed by the department also in the year 2008.
- III. **The said license has been renewed on 26.02.2008, 24.02.2011, 21.02.2014 and 16.06.2017 till 13.03.2020, with the new address on record since 2008.**
- IV. On 27.08.2014, the petitioner again informed the DCP AAD about the change of address duly intimated in 2008 and also acted upon the department.
- V. On 05.04.2014 and 15.02.2014, the petitioner deposited the licensed gun with T.C. Biswas & Co., Gun Makers.
- VI. Vide letter dated 30.04.2014 the DCP, AAD issued direction for action under Section 188 IPC against licensed arms holder who have failed to deposit their arms. The petitioner's name was at

number 17 with the endorsement 'Not Found Since long notice could not be served'. The old address of the petitioner was reflected in the sheet.

- VII. The address in the Charge Sheet is the new address, though FIR shows the old address.

30. **Section 188 of the Indian Penal Code, lays down:-**

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Ingredients of offence.— The essential ingredients of the offence under Sec. 188 are as follows:-

- (1) There was promulgation of an order;
- (2) Such promulgation was made by a public servant;
- (3) Public servant was legally empowered to make the promulgation;
- (4) Promulgation directed not to do certain things or to take certain orders in connection with certain property in his possession or management;
- (5) Accused knew of the promulgation;

- (6) *Accused disobeyed it;*
- (7) *Such disobedience caused or tended to cause obstruction, annoyance, injury, or risk of the same to a person lawfully employed, or caused or tendered to cause danger to human life, death or safety or a riot or affray.”*

31. CLAUSE – 6 has been duly complied by the petitioner as prima facie seen from the documents filed. There is prima facie no violation by the petitioner.

32. **The report submitted by S.I. Anti Fraud Section DD, Lalbazar, dated 23.03.2023 is as follows:-**

“.....A requisition was send to Deputy Commissioner of Police, Reserve Force, Arms Act Department seeking information regarding genuineness of the letter submitted by the accused person namely Anil Kumar Verma regarding change of address in reply of the said Deputy Commissioner of Police vide Memo No. 823/AA/Encls, File No. M-14/23 (Misc) dated 22.03.2023 replied. That the letter as mentioned above is genuine and in view of those letter. The address was changed/endorsed in this licence as well as updated in this office records and signed on 09.09.2008.....”

33. **Thus it is clear that the petitioner’s change of address was in the records of DCP, AAD as on 09.09.2008. Moreso the petitioner also deposited his arms prior to the notice date 30.04.2014, under Section 188 IPC.**

34. Accordingly it is on record that the ingredients required to constitute the offence alleged is clearly not present in respect of the petitioner.

35. **The petitioner has been made to face such harassment for no fault of his and in spite of being diligent.**

36. **It is the negligence and laches on the part of respective department (herein the DCP, AAD) which has caused such hardship to the petitioner for no fault of his.**
37. **Accordingly the Commissioner of Police, Kolkata is directed to take necessary action against the Investigating Officer, who in spite of all the materials on record has submitted charge sheet which prima facie appears to have been submitted without conducting a proper investigation in accordance with law.**
38. **CRR 1930 of 2019 is thus allowed.**
39. The proceedings being G.R. Case No. 637/2014 arising out of Bowbazar Police Station Case No. 209 of 2014 dated 10.05.2014 under Section 188 of the Indian Penal Code, 1860 read with Section 30 of the Arms Act, 1959 presently pending before the Learned 12th Metropolitan Magistrate, Calcutta and Order dated 09.04.2019 passed by the Leaned 12th Metropolitan Magistrate, Calcutta, is hereby quashed.
40. The present case is dated 10.05.2014. The petitioner is being harassed for almost 10 year. Let a copy of this order be sent to the Commissioner of Police, Kolkata, who shall conduct an inquiry and fix responsibility as per disciplinary rules in accordance with law.
41. No order as to costs.
42. All connected Applications stand disposed of.
43. Interim order if any stands vacated.

44. Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
45. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)