

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1931 of 2019

**Satyen Dhingra
Vs
The State of West Bengal.**

For the Petitioner : Mr. Phiroze Edulji,
Mr. Saryati Datta,
Mr. P. Mukherjee,
Ms. Soumili Chowdhury.

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

Heard on : 24.07.2023

Judgment on : 16.08.2023

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 Learned 12th Metropolitan Magistrate, Calcutta, thereby rejecting the petitioner's prayer for discharge in connection with G.R Case No.637 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.

2. The petitioner's case is that the petitioner is aged about 57 years and is a law abiding citizen of India. He is a permanent resident of 6/4, Pashupati Bhattacharya Road, Police Station-Behala, Kolkata-700 034 and is a businessman by profession.
3. The petitioner is a holder of a licensed arm, being one 32 Bore Revolver No. C-2993, issued to him in 2001 under License No.1559/July/2001/Kol by the Reserve Forest, Arms Act Department, Kolkata. In the said license, the petitioner's initial residential address was recorded as 10, Ganesh Chandra Avenue, Police Station-Bowbazar, Kolkata – 700013.
4. In 2006 the petitioner moved his permanent residence to 6/4, Pashupati Bhattacharya Road, Police Station-Behala, Kolkata-700 034, which is registered in the name of his Partnership Firm. By a letter dated 16.12.2006, addressed to the District Magistrate, South 24 Parganas, Bhabani Bhaban, Kolkata, the petitioner informed inter alia 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. **Copy of the letter at page 35 to the revisional application bears seal of receipt of the department dated 02.01.2007. Copy was sent to the DC, AAD, Lal Bazar, Kolkata-1.**

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. In 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 deposited his licensed arm on 08.04.2015. The petitioner was also given a receipt dated 08.04.2015 against the deposit of his licensed arm.
7. That in pursuance of the letter dated 30.04.2014 of the Deputy Commission of Police, Reserve Forest, Arms Act Department, on 10.05.2014, the Officer-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.27. That despite the request made by the petitioner to the District Magistrate, South 24 Parganas, Bhabani Bhaban, 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 licence in 2008 itself. Consequently, on the basis of the list of defaulters dated 10.05.2014, the Office-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 of the Election Commission of India, failed to deposit their licensed arms.

8. On 14.05.2014, the petitioner addressed a letter to the Deputy Commissioner of Police, Reserve Forest, Arms Act Department, Kolkata, apprising of the change in his permanent residential address and requesting to make the necessary changes in the records with the Department.
9. 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 Arm's Act, 1959.
10. 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.

11. 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.
12. That on 08.03.2017, the petitioner voluntarily surrendered before the learned 12th Metropolitan Magistrate, Calcutta and on the self-same date, the learned Magistrate, by an order, was pleased to enlarge the petitioner on bail.
13. On 04.09.2017, the petitioner filed an application for discharge.
14. 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.
15. **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.
16. That it is trite law that while deciding an 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.

17. 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 16.08.2016 upto 29.07.2019 with the new address, duly endorsed by the department on the licence on 02.07.2014.
18. 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.
19. 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 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 to show how erroneously the enquiry was conducted by the Department/Officer-In-Charge of the Bowbazar Police Station.
20. That at the time of hearing the application for discharge, the receipt against the deposit of the petitioner's licensed arm dated 08.04.2015 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.

21. **That in the Charge Sheet, it is mentioned that the petitioner is a resident of 6/4, Pasupati Bhattacharjee Road, Kolkata – 700034, Behala.** 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.
22. It is submitted, 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.

23. 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.
24. 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.
25. **Mr. Sudip Ghosh, learned counsel for the state has submitted a report dated 24.07.2023 as called for, along with the case diary.**
26. **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."

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

- I. The petitioner by a letter dated 16.12.2006 received on 2.1.2007 informed the DM, 24 Parganas(S) about the change of address, as to 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 02.01.2007. Copy was sent to the DC, AAD, Lal Bazar, Kolkata-1.

- II. **At page 36 is the copy of letter dated 14.05.2014 showing the change of address duly endorsed by the department also on 14th May, 2014, which was sent to the DC RF(AAD), Lalbazar, by the petitioner.**
- III. **The said license has been renewed on 29.07.2019 with the new address on record since 02.07.2014 duly endorsed by the department (DC, RF(AAD)).**
- IV. On 08.04.2015 the petitioner deposited the licensed gun with T.C. Biswas & Co., Gun Makers.
- V. 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 27 with the endorsement 'Not Found Since long, notice could not be served'. **The old address of the petitioner was reflected in the sheet.**
- VI. **The address of the petitioner in the Charge Sheet is the new address, which was duly informed to the authorities.**

28. 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 tends 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.”*

29. 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.

30. **The report submitted by S.I. Anti Burglary Squad, DD, Lalbazar, dated 24.07.2023 is as follows:-**

“..... However it is benignly submitted that in connection with the instant matter vide CRR no.1931/2019 the undersigned contacted with Arms Act Department, Kolkata and it transpired that petitioner namely Satyen Dhingra indeed submitted intimation to Arms Act Department, Kolkata regarding change of his address but no copy of such petition was marked and send to Bowbazar P.S which is self-revealing from such correspondence enclosed herewith for your office's perusal.....”

31. Accordingly, the ingredients required to constitute the offence alleged is clearly not present in respect of the petitioner as the notice was not duly served upon the petitioner **though he had intimated his change of address to the concerned departments on 02.01.2007.**
32. **CRR 1931 of 2019 is thus allowed.**
33. 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.
34. No order as to costs.
35. All connected Applications stand disposed of.
36. Interim order if any stands vacated.

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

(Shampa Dutt (Paul), J.)