



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 327 of 2023

Manish S/o Ratanlal Agrawal
Aged about 53 yrs, Occ. Business,
R/o Flat No. 404, Silver Palace,
Yashwant Stadium, Nagpur.

... Petitioner

- VERSUS -

(1) The State of Maharashtra,
through Commissioner of Police,
Nagpur City, Nagpur.

(2) The Deputy Police Commissioner (H.Q.),
Nagpur City, Nagpur.

... Respondents

Mr. Anil S. Mardikar, Senior Advocate with Mr. S. A. Bramhe, Advocate
for the petitioner
Mr. A. R. Chutake, APP for the respondents

CORAM : ANIL L. PANSARE J.

DATED : 25-9-2023

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the
petition is heard finally.

2. The challenge is to the order dated 31-3-2023 passed by
the respondent no. 1 – Commissioner of Police, Nagpur City, Nagpur
cancelling the licence issued to the petitioner. The petitioner has

prayed to direct the respondent nos. 1 and 2 to renew the licence of the petitioner.

3. Having heard the learned Senior Counsel and learned Additional Public Prosecutor, it transpires that the petitioner had applied for grant of licence for revolver. Permission was granted and licence came to be issued in his favour bearing licence No. 5066/III/NGP/2006. The petitioner is said to have renewed the licence from time to time and there was no adverse allegations against him.

4. Respondent No. 2 – Deputy Police Commissioner on 25-11-2022 issued show cause notice calling upon the petitioner to explain as to why licence issued should not be cancelled on the ground of four cases, mentioned in the notice, pending against him.

5. Learned Senior Counsel has invited my attention to the reply given by the petitioner dated 31-12-2022 through his counsel stating therein that the four cases in which NC No. 551/2017 under Sections 504 and 506 of the Indian Penal Code is included, the non-cognizable offence came to be registered against the petitioner on the information received from the complainant therein. The complainant alleged that the petitioner threatened the complainant by pointing the revolver. The petitioner raised the issue in the revision. Learned

Sessions Court, Nagpur has observed that without the order of Magistrate in terms of Section 155 of the Code of Criminal Procedure, the police officer cannot investigate a non-cognizable case. According to the petitioner, neither the Investigating Officer nor the complainant has obtained the order in this regard and, therefore, there is no further action in the N.C. case. As regards other three cases, the petitioner has been acquitted.

6. The learned Senior Counsel has then invited my attention to the impugned order and has rightly argued that the only paragraph that deals with reasoning for revoking licence, does not indicate any consideration to the say filed by the petitioner as regards the status of the cases which the respondent no. 1 has relied upon to revoke the licence. In that sense, the order has been passed without application of mind and facts brought to the notice of the respondent no. 1.

7. Learned Additional Public Prosecutor has opposed the petition on the ground that the petitioner has remedy under Section 18 of the Arms Act and, therefore, this Court ought not to exercise writ jurisdiction.

8. However, since the order has been challenged on the ground of non application of mind, which appears to be so from the

face of the record, I do not see any restriction to exercise writ jurisdiction despite there being alternate efficacious remedy available to the petitioner.

9. In the circumstances, the order impugned is unsustainable and is liable to be quashed with the direction to the respondent no. 1 to consider the issue afresh after giving opportunity of hearing to the petitioner. Hence, following order.

ORDER

- (i) The petition is partly allowed.
- (ii) The order dated 31-3-2023 passed by respondent no. 2 – Deputy Commissioner of Police (H.Q.), Nagpur City, Nagpur is quashed and set aside.
- (iii) The proceedings are restored on the file of respondent no. 1 with direction to consider the issue afresh in the light of whatsoever has been said in the body of this judgment and by giving an opportunity of hearing to the petitioner.
- (iv) The petitioner shall appear before the respondent no. 1 on 16-10-2023 at 11.00 a.m.

(Anil L. Pansare, J.)

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