

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

**C.R.R. 4489 of 2008
With
CRAN 1/2009 (Old CRAN 1049/2009)
With
CRAN 4/2010 (Old CRAN 720/2010)**

**Hidayatulla Khan
Versus
The State of West Bengal**

For the Petitioner : Mr. Milon Mukherjee, Adv.
Mr. Aritra Bhattacharya, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Paramanick, Adv.

Heard on : 21.06.2024

Judgment on : 03.09.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application, the petitioner has prayed for quashing of the proceedings being G.R. Case No. 1077 of 2002, pending before the Court of the Learned Metropolitan Magistrate, 16th Court, Kolkata arising out of Section I (Muchipara Police Station) Case No. 78 dated 14.05.2002 under Sections 25(1B) (a)/27 of the Arms Act, 1959 and after conclusion of Investigation, a charge sheet being Charge Sheet No. 258 of 2002 dated 27.09.2002 has been submitted under Section 25(1B) (a) of the Arms Act, 1959 against the petitioner.

2. Facts giving rise to this application may be summarised as under:

2a. Section I (Muchipara Police Station) Case No. 78 dated 14.05.2002 has been initiated on the basis of a suo-motu complaint lodged by one Mr. M. R. Sardar, Sub-Inspector of Police attached to Muchipara Police Station alleging, *inter alia*, that the petitioner was found to have in his possession of a revolver loaded with 6 rounds of cartridges tied with belt, fastened around the waist under the cover of a shawl. The petitioner could not produce any valid document for possession of such revolver. Accordingly, the aforesaid case has been

registered against the present petitioner for causing investigation for commission of offences punishable under Sections 25(1B) (a)/27 of the Arms Act, 1959.

2b. Finally, after conclusion of investigation, charge sheet being No. 258 of 2008 dated 27.09.2002 under Section 25(1B) (a) of the Arms Act, 1959 has been submitted by the Investigating Officer against the petitioner and subsequently a charge was framed on 25.04.2008 against the petitioner under Section 25(1B) (a) of the Arms Act, 1959 by the learned Trial Court when it was found prima facie case.

2c. The contention of the petitioner is that the entire proceeding is liable to be quashed because Section 25 (1B) (a) is not at all applicable against the present petitioner since he had a licence of the said seized revolver. He ought not to have implicated under Section 25(1B) (a) of the Arms Act, 1959 as it is not applicable against the present petitioner. Hence, the petitioner approached before this Hon'ble High Court seeking for quashing of the proceedings.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Mr. Mukherjee, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner is innocent. He had a

valid licence granted by the concerned authority. However, the allegation against the present petitioner is that he failed to produce any valid documents for the possession of revolver and cartridge when he was asked for though he had a valid licence but actually he failed to renew the said licence due to some unavoidable circumstances within due date.

3a. Learned senior counsel further submitted that charge was framed under Section 25(1B) (a) of the Arms Act, 1959 against the present petitioner by the learned Trial Court without application of judicious mind and without considering the actual case of the petitioner. The learned Magistrate framed charge under Section 25(1B) (a) of the Arms Act, 1959 though it is not permissible in the eye of law. Accordingly, the proceeding thereof is required to be quashed and charge framed under Section 25 (1B) (a) of the Arms Act, 1959 is also liable to be set aside otherwise it would be an abuse of process of law.

SUBMISSION ON BEHALF OF THE STATE:

4. On the other hand, learned counsel appearing on behalf of the State vehemently argued that whenever the petitioner failed to renew his licence then it would be tantamount to illegal possession of the arms. Accordingly, he is liable to punish to the offence punishable

under Section 25(1B) (a) of the Arms Act, 1959. Accordingly, the learned Magistrate has rightly framed charge against the present petitioner upon submission of the charge sheet and when he found a prima facie case. Learned counsel, however, admitted that the Office of the Deputy Magistrate, Nalanda, Bihar, confirmed that the alleged arms licence vide No. 430/83 was issued in favour of the petitioner herein, Hidayatulla Khan S/o Lt. Enayatulla Khan of 35, Dent Mission Road, P.S. Iqbalpore, Kolkata -23 for the said revolver. However, the said licence was neither renewed nor arms was deposited to the concerned authority. Learned counsel appearing on behalf of the State filed a report of the same to this Court. Same was taken on record.

DISCUSSION AND FINDINGS OF THIS COURT:

5. Having heard the rival arguments of the counsels for the parties and on perusal of the record and report submitted by the State, this Court finds, the petitioner had a licence issued by Deputy Magistrate, Nalanda, Bihar vide arms licence No. 430/83. However, it was not renewed by the petitioner.

6. Now, a moot question arises whether non-renewal of licence of a fire arm or expiry of licence is punishable under Section 25(1B) (a) of the Arms Act or not?

To decide this question and for ready reference, this Court would like to refer the Section 25(1B) (a) of the Arms Act as under:

S. 25(1B) (a) reads as follows: Whoever-

- (a) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend five years and shall also liable to be fine.

Provided that the Court may have any adequate and special reasons to be recorded in the judgment imposed a sentence of imprisonment for a term of less than two year.

7. To know whether the petitioner violated any of the contraventions of Section 3 of the Arms Act or not, the section is to be reflected hereunder:

“S. 3. Licence for acquisition and possession of firearms and ammunition. —(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983 (25 of 1983), may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.”

8. From the perusal of the Section 3 of the Arms Act, the present petitioner does not fall within the categories of any of the contravention of Section 3 of the Arms Act, since it is admitted fact that he had a valid licence of the alleged revolver. But he failed to renew the same. If anybody fails to renew the same, the Section 21 of the Arms Act and Rule 54(2) would apply and the authority issuing licence shall be ordinarily responsible for monitoring all future renewals of the licence, if anybody fails.

9. This Court would also like to refer Rules 54 of the Arms Rules, 1962 for ready reference and to understand the situation of the present case as under:

“S. 54. Renewal of licence. -(1) Every licence may, at its expiration and subject to the same conditions (if any) as to the grant thereof, be renewed by the authority mentioned in Schedule II as renewing authority:

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specially empowered in this behalf by the State Government under rule 4.

(2) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence. Where a licence is renewed by an authority other than the authority who granted it, the former shall forthwith inform the latter of the fact of renewal and the period for which such renewal is valid. The applicant for the renewal of a licence under this rule shall always be required to state his permanent residence, and, if he notifies a change in his permanent residence to the district in which the renewal is sought, the licensing authority of such district shall henceforth become responsible for watching all future renewals of his licence and shall inform the original issuing authority accordingly. The procedure shall be repeated on each subsequent occasion of renewal of the licence, the necessary intimation being sent by the renewing authority to the original issuing authority or to the authority who last renewed the licence on a permanent change of residence, as the case may be.

(3) An application for renewal of a licence for arms or ammunition deposited under sub-rule (1) of Rule 47 may be made by the depositor, or where it is not practicable to make the application direct, through

the dealer or any other person authorised by him in this behalf, while the arms or ammunition continue to be so deposited.

(4) The licensing authority may consider an application for renewal of a licence, if the period between the date of its expiry and the date of application is not, in his opinion, unduly long with due regard to the circumstances of the case, and all renewal fees for the intervening period are paid; otherwise, the application may be treated as one for grant of a fresh licence.”

10. In the instant case, it is an admitted fact that the licence was not renewed by the petitioner in time. Licence was expired long ago but neither the concerned authority took any action nor the petitioner deposited the same although he must have to deposit the same.

11. Section 21 of the Arms Act reads as follows: -

Deposit of arms, etc., on possession ceasing to be lawful. -

(1) Any person having in his possession any arms or ammunition the possession whereof has, in consequence of the expiration of the duration of a license or of the suspension or revocation of a license or by the issue of a notification under section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject

to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation. - In this sub-section "unit armoury" includes an armoury in a ship or establishment of the Indian Navy.

(2) Where arms or ammunition have or has been deposited under sub-section (1), the depositor or in the case of his death, his legal representative, shall, at any time before the expiry of such period as may be prescribed, be entitled-

(a) to receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) to dispose, or authorise the disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this sub-section shall be deemed to authorise the return or disposal of anything of which confiscation has been directed under section 32.

(3) All things deposited and not received back or disposed of under sub-section (2) within the period therein referred to shall be forfeited to Government by order of the District Magistrate:

Provided that in the case of suspension of a license no such forfeiture shall be ordered in respect of a thing covered by the license during the period of suspension.

(4) Before making an order under sub-section (3) the District Magistrate shall, by notice in writing to be served upon the depositor or in the case of his death, upon his legal representative, in the prescribed manner, require him to show cause within thirty days from the service of the notice why the things specified in the notice should not be forfeited.

(5) After considering the cause, if any, shown by the depositor or, as the case may be, his legal representative, the District Magistrate shall pass such order as he thinks fit.

(6) The Government may at any time return to the depositor or his legal representative things forfeited to it or the proceeds of disposal thereof wholly or in part.

12. Considering the above provisions, it is clear that if the licence is not renewed then it would be ceased to be lawful. The petitioner ought to have deposited without unnecessary delay either with the Officer-in-Charge of the nearest Police Station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury. In addition, the authority issuing licence shall be ordinarily responsible for monitoring all future renewals of the licence under Rule 54(2) of the Arms Rules, 1962. If any licensee does not file any application for renewal of licence within time framed, then the Issuing Authority cannot permit any such person to have in his

possession of any weapon or arms or cartridge without any valid licence as required under the provisions of Arms Act because it is the duty of the authorities concerned. This Court does not find any prima facie materials against the present petitioner for an alleged offence punishable under Section 25(1B) (a) of the Arms Act, 1959. Hence, proceeding under Section 25 (1B) (a) is not justified and proper. Consequently, if the proceeding is continued against the present petitioner under section 25 1B (a) of the Arms Act, it would be an abuse of process of law, in such situation this Court can utilize its inherent power or jurisdiction under Section 482 of the CrPC corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to quash the FIR and consequential proceedings to prevent the abuse of process of law and to secure the ends of justice.

13. Accordingly, proceedings being G.R. Case No. 1077 of 2002, pending before the Court of the Learned Metropolitan Magistrate, 16th Court, Kolkata arising out of Section I (Muchipara Police Station) Case No. 78 dated 14.05.2002 under Sections 25(1B) (a)/27 of the Arms Act and charge sheet being Charge Sheet No. 258 of 2002 dated 27.09.2002 under Section 25(1B) (a) are hereby quashed insofar as the petitioner is concerned and order of charge framed under Section

25 (1B) (a) of the Arms Act, 1959 and subsequent orders thereof also stands set aside.

14. Accordingly, **C.R.R. 4489 of 2008** is, thus, **allowed**. Consequently, **CRAN 1/2009 (Old CRAN 1049/2009)** and **CRAN 4/2010 (Old CRAN 720/2010)** are also, thus, disposed of.

15. Case Diary is to be returned to the learned Counsel for the State.

16. Interim order, if any, stands vacated.

17. Let a copy of this judgment be sent to the learned Court below for information.

18. Parties will act on the server copies of this judgment uploaded on the official website of this Court.

19. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)