

(2002) 08 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2502 of 1995

Krishan Chand

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Aug. 9, 2002

Acts Referred:

- Arms Act, 1959 - Section 17(7)

Citation: (2003) 1 RCR(Criminal) 166

Hon'ble Judges: G.S. Singhvi, Acting C.J.

Bench: Single Bench

Advocate: Baljinder Singh, for the Appellant; Charu Tuli, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

G.S. Singhvi, Act. C.J.,

1. This is a petition for quashing orders Annexure P-I dated 30.6.1989 and Annexure P-3 dated 31.10.1994 passed by District Magistrate, Sangrur (respondent No.3) and Commissioner (Appeals), Patiala and Ferozepur Division, (respondent No.2) under the Arms Act, 1959 (for short "the Act").

2. For the purpose of deciding the issue raised in the petition, we may briefly notice the facts.

3. The petitioner was given licence by the competent authority for a rifle of 315 bore. He was prosecuted in the Court of Additional Sessions Judge, Sangrur for offences u/s 302/148/149 IPC read with Section 27/54/59 of the Act. He was convicted on 24.11.1988 and sentenced to life imprisonment. On appeal, a Division Bench set aside the judgment of conviction and acquitted him of the charges by giving benefit of doubt.

4. In the meanwhile, the respondent No.3 initiated proceedings for cancellation of the licence issued to the petitioner in respect of rifle of 315 bore. He issued show

cause notice to the petitioner and passed order Annexure P-I for cancellation of the licence. The appeal filed by the petitioner u/s 9 of the Act was dismissed by respondent no. 2 by recording the following reasons:-

"I have gone through the written arguments submitted by the appellant and examined the record also. I find that Hon'ble High Court has only given the benefit of doubt to the appellant and on that basis acquitted him. But it does not amount to acquittal on merits and the impugned order of the learned District Magistrate is very detailed. I do not find any force in the arguments of the appellant nor any reason to differ with the findings of the learned District Magistrate. The appeal is therefore dismissed."

5. Learned counsel for the petitioner argued that even though the order passed by respondent No.3 for cancellation of the licence on account of the petitioner's conviction by the court of Additional Sessions Judge was legally correct, the order passed by respondent No.2 should be declared illegal and quashed because the reasons assigned by him for refusing to set aside the order of cancellation are pre-se irrelevant and legally unsustainable. He invited my attention to sub-clause 7 of Section 17 of the Act to show that when the court orders suspension or revocation of licence on the ground of conviction, the same becomes void as soon as the judgment of conviction is reversed and argued that respondent No.2 committed a serious illegality by upholding the order of cancellation despite the fact that the petitioner had been acquitted. Learned counsel submitted that law does not make any distinction between honourable acquittal and acquittal by giving benefit of doubt and therefore, the impugned orders may be quashed and the licence of the petitioner may be restored with consequential benefits.

6. Learned Senior Deputy Advocate General candidly stated that the petitioner's licence was cancelled solely on the ground of his conviction by the court of Additional Sessions Judge. She also conceded that as per proviso to Section 17(7), the acquittal of the accused results in automatic nullification of the order of cancellation. She, however, argued that respondent No.2 maintained the order of cancellation keeping in view the larger public interest.

7. I have thoughtfully considered the respective arguments and perused the record.

8. In my opinion, the impugned orders are liable to be set aside because the reason which constituted the foundation of the decision by respondent No.3, namely, conviction by the court of competent jurisdiction became non-existent with his acquittal and, therefore, the same could not be relied upon for sustaining the cancellation of licence.

9. I am further of the view that order Annexure P-2 is liable to be quashed because the law does not make any distinction between honourable acquittal and acquittal by giving benefit of doubt.

10. Hence, the writ petition is allowed. Orders Annexure P-I and P-2 are declared illegal and quashed. Respondent No.3 is directed to restore the licence of the petitioner alongwith the rifle.

11. It is, however, made clear that if the competent authority discovers any other legally permissible and valid ground for suspension or revocation of the licence of the petitioner, then the said authority shall be free to pass appropriate order in accordance with law, albeit after giving notice and opportunity of hearing.