

(2012) 05 AHC CK 0071

Allahabad High Court

Case No: C.M.W.P. No. 3863 of 2002

Arun Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 18, 2012

Acts Referred:

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 420, 468, 471, 474

Citation: (2012) 3 ACR 2842

Hon'ble Judges: Sunita Agarwal, J

Bench: Single Bench

Advocate: Arun Srivastava, Ashish Kumar Sinha and G.S. Hajela, for the Appellant;

Final Decision: Dismissed

Judgement

Sunita Agarwal, J.

Heard Sri Ashish Kumar Sinha holding brief of Sri G.S. Hajela, learned counsel for the petitioner and the learned standing counsel for the respondents. By this petition, the petitioner has challenged the order dated 3.3.2001 passed by the Civil Judge (Jr. Div.), Tilhar, Shahjahanpur passed on the application of the petitioner for release of licenced gun in criminal case No. 79 of 1996 under Sections 420, 468, 471, 474, I.P.C. and 25 of the Arms Act.

2. The contention of the petitioner is that the condition imposed by the Civil Judge (Jr. Div.) while releasing the licenced gun D.B.B.L. No. 1670A/84-92 of the petitioner are bad in the eye of law inasmuch as the petitioner has been directed not to carry his gun within the territory of State of U.P.

3. Case of the petitioner is that he had gone to Nagaland and resided there for two years and as there was apprehension of danger of his life from extremists, he had applied for licence of D.B.B.L. gun before the Deputy Commissioner, Nagaland. The Deputy

Commissioner Mon. Nagaland after thorough investigation and enquiry issued the licence of gun. After staying there for a period of two years he returned to his permanent place of residence at Shahjahanpur (U.P.). He states that his licence was renewed upto 31.12.2002. However it has not been mentioned as to who is the authority who has passed the order for renewal of the licence.

4. In the meantime, a criminal case under Sections 420, 468, 471 and 474, I.P.C. and 25, Arms Act relating to possession of unauthorized gun has been registered against the petitioner.

5. The contention of the petitioner is that the police authorities after investigation found the licence of the petitioner is valid. However, the criminal case was registered against him and he has moved an application on 30.6.2000 for release of the gun in his favour. The court below after seeking a report from the police station and considering the fact that the licence of the petitioner is renewed till 31.12.2002 has directed for release of gun with the condition mentioned in the order. While releasing the same, it was observed by the court below that in view of the judgment of this Court passed in Civil Misc. Writ Petition No. 33288 of 1994, Pravesh Kumar and another v. District Magistrate, Shahjahanpur and others, decided on 18.1.1995. the licence issued by the Deputy Commissioner, Nagaland is Invalid in the State of U.P. and in view thereof, the petitioner was directed not to carry the licenced firearm within the territory of State of U.P.

6. Learned standing counsel appearing on behalf of the respondents states that in view of paragraph 4 of the judgment in case of Pravesh Kumar (supra) it is clear that the District Magistrate being a licensing authority can issue a licence for the district or his area of jurisdiction or any specified part of his jurisdiction. He has not been conferred the power to grant a licence which may be valid for whole of India or any specified part thereof. It is only the State Government in certain cases and the Central Government which have the authority to grant a licence which may be valid for whole of India. Rule 3 and Rule 4 of the Rules framed by the Arms Rules," 1962 framed under the Arms Act, 1959 are as follows:

3. Classification of arms and ammunition.--For the purposes of the Act and these rules, "arms" or "ammunition" shall be of the categories specified in columns 2 and 3 respectively of Schedule 1 and references to any category of arms or ammunition in these rules shall be construed accordingly."

4, Licensing authority and forms of licences.--Licences under Chapter II of the Act may be granted or renewed for such purposes, by such authorities, in such Forms and to be valid for such period and in such areas as are specified in Schedule II, subject to such conditions as are specified in that Schedule and in the licence:

(Provided that the licences granted or renewed by a licensing authority may be signed by such officer subordinate to that authority as may be specially empowered in this behalf by the State Government)

7. Schedule II under Rule 4 of Arms Rules, 1962 provides that where the licensing authority is the District Magistrate for the purpose of acquisition/possession of firearm, the licence can be provided to the class of persons belonging to the district or any specified area under the heading of area for which licences can be granted is "throughout the district or his area of jurisdiction, or any specified part of his jurisdiction".

8. In view of the specific provisions as contained in Arms Act read with Arms Rules, 1962, it is clear that the licence of the petitioner as granted by the Deputy Commissioner, Mon, Nagaland, India is not valid for the whole of India. In view of the above discussion, the order passed by the court below putting the condition that the arms licence shall not be carried by the petitioner within the State of U.P., suffers from no illegality and warrants no interference by this Court.

The writ petition is dismissed.

No order as to costs.