
(2010) 09 AHC CK 0143

Allahabad High Court

Case No: Misc. Single No. 1354 of 2006

Raj Bahadur @ Rajendra Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 25
- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Judgement

Anil Kumar, J.

Heard Sri Vimal Kishore Verma, learned Counsel for the petitioner and Smt. Ketki Srivastava, learned Standing Counsel for the opposite parties.

2. In brief, the facts , as stated by the learned Counsel for the petitioner are to the effect that the petitioner is an agriculturist and also carrying the business of running crusher in the partship in village-Galarai Tahsil-Mohammadi, District KhriLakhimpur, was granted a arm licence No. 1168 of Rifle No. 21452 for his sfety and the safety of his family and other personal property.

3. An First Information Report was lodged. Accordingly, at case crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC was registered at P.S. Pasgawan District Lakhimpur Kheri in which the name of the petitioner was found place alongwith other persons.

4. Thereafter on 11.1.2003 Investigating Officer investigated the matter in question and the name of the petitioner was excluded. However , the chargesheet dated 11.1.2003 was issued to the other persons, namely, Nanhey alias Aditya Verma son of Raj Bahadur alias Rajendra Verema , Jwala Prasad son of Natthu Lal and Sanjay son of Raj Bahadur alias Rajendra Verma.

5. In view of the said development, the District Magistrate, Lakhimpur Kheri, opposite party No. 3, the licensing authority had issued a show cause notice on 17.3.2004 and suspended the arm licence of the petitioner. The petitioner submitted his reply on 26.3.2004 in response to the show cause notice. Considering the same, the opposite party No. 3 vide order dated 2.3.2005 had cancelled the arm licence of the petitioner.

6. Aggrieved by the same, the petitioner filed a statutory appeal u/s 18 of the Arms Act before the Commissioner, Lucknow Division, Lucknow who by means of order dated 30.11.2005 partly allowed the same with a direction that the petitioner's arms licence will remain suspend till the decision in Case Crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC.

7. Aggrieved by the said order, the present writ petition has been filed before this Court.

8. Sri Vimal Kishore Verma, learned Counsel for the petitioner on the basis of the averments made in supplementary affidavit filed alongwith application No. 86743 of 2010 dated 23.8.2010, in para 3 of the affidavit, it is stated as under:

That during the pendency of the present writ petition now case crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC has been finally adjudicated by the judgment dated 23.2.2010 passed by the Sessions Judge, Kheri by which all the co-accused persons have been acquitted from the aforesaid case crime. In this regard, Annexure No. S.A.I is the certified copy of the judgement dated 23.3.2010, passed by Sessions Judge, Kheri is being annexed with this supplementary affidavit.

9. Accordingly, Sri Vimal Kishore Verma learned Counsel for the petitioner submits that once the judgment in case crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC has been passed on 23.2.2010 by the competent court of law/Sessions Judge, Kheri and the persons are acquitted the same has attend finality, so there is no justification or reason to suspend the petitioner's arm licence, and the order dated 30.11.2005 passed by opposite party No. 2 is liable to be quashed. In support of his arguments Sri Verma has relied thefollowing judgments:

(1) Ram Sanahi v. Commissioner, Devi Patan Division, Gonda and Anr. 2004 (22) LCD 1643.

(2) Balram Singh v. State of U.P. and Ors. 2006 (24) LCD 1359

10. Sri Suresh Panjwani, learned Standing Counsel on the basis of the documents does not dispute the above said position that in case crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC , final judgment has been passed by the competent court of law on 23.2.2010.

11. I have heard the learned Counsel for the petitioner and gone through the record.

12. So far as the factual matrix of the present case is concerned, it is not disputed that the petitioner was holder of arm licence No. 1115 of Rifle No. 96 A.B. 3413 initially suspended and a show cause notice was issued on 17.3.2004 thereafter the same was canceled on 2.3.2005. Aggrieved by the same the petitioner filed a statutory appeal before the appellate authority, who vide order dated 30.11.2005 had allowed the appeal and modified the order dated 2.3.2005 passed by the licensing authority to the extent that the petitioner's arm licence shall remain suspend till the final decision in case Crime No. 279 of 2002, Under Sections 147, 148, 149, 302, 504 IPC.

13. In view of the aforesaid fact and documents on record, once the aforesaid criminal case has been finally adjudicated and decided by the competent court of law vide judgment and order dated 23.2.2010 and the persons who are family members of the petitioner, involved in the said case have been finally acquitted so keeping in view the law as laid down by this Court in the case of Ram Sanehi (Supra) has held as under:

In view of the aforementioned case law cited by learned Counsel for the petitioner as well as facts and the circumstances of the present case and the evidence on record it appears that the ground for cancellation of arms licence does not satisfy the conditions provided u/s 17 of the Arms Act . In the absence of any finding relating to breach of public peace or tranquility on account of continuance of arms licence in petitioner's possession the impugned order does not sustain under law.

14. In the case of Balram Singh (Supra) this Court has held as under:

Learned Counsel for the petitioner has invited attention towards a judgment reported in 2004 (22) LCD 1643 Ram Sanehi v. Commissioner, Devi Patan Division, Gonda and Anr. and submitted that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranquility shall not create a ground for cancellation of arm licence. Keeping in view the facts and circumstances and material on record, since, petitioner has been already acquitted in the pending criminal case relying upon which the impugned orders have been passed, they are not sustainable under law.

15. So there is no justification or reason on the part of the authority concerned to keep the arm licence of the petitioner as suspended in view of the order dated 30.11.2005 passed by the appellate authority when admittedly by the said order arm licence of the petitioner has been suspended till the decision of the case crime No. 279 of 2002 under Sections 147, 148, 149, 302, 504 IPC which has already been decided by the competent court and the persons who are involved in the said case, have been acquitted.

16. For the foregoing reasons, the writ petition is allowed with a direction to the licensing authority i.e. District Magistrate, Lakhimpur Kheri to restore the petitioner's licence No. 1168 of Rifle No. 21452 forthwith.

17. No order as to cost.