

(2011) 07 AHC CK 0254

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 41618 of 2010

Rakshapal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 13, 2011**Acts Referred:**

- Arms Act, 1959 - Section 18, 25, 30
- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 182, 307, 504

Citation: (2012) 1 ACR 831 : (2011) 7 ADJ 914 : (2011) 4 RCR(Criminal) 876 : (2011) 4 RCR(Criminal) 876**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Sudhir Agarwal, J.

The Petitioner possess a fire-arm license No. 8816 whereupon an entry of Gun No. S.B.B.L. 10718 exist. It has been alleged that a Criminal case being Case Crime No. 400/07 under Sections 307 and 504 I.P.C. was registered against the Petitioner. The aforesaid license was suspended on 31st July, 2007. The order of suspension besides mentioning the factum of registration of the aforesaid criminal case further stated that Petitioner used aforesaid gun in the crime which was recovered by the local police and the Petitioner could not show his gun, when required. Hence another case No. 401 of 2007 under Sections 25 and 30 Arms Act was also registered. On the recommendation of the Station Incharge, which was approved by Senior Superintendent of Police, Aligarh, Additional District Magistrate suspended arm license vide order dated 31st July, 2007 and thereafter passed final order on 8th July, 2008 cancelling the said license. The petitioner preferred an appeal u/s 18 of Arms Act on 8th August, 2008 which has been rejected on 5.5.2010.

2. During pendency of the appeal, Criminal case under Sections 307 and 504 I.P.C. was decided vide judgment dated 17th June, 2009 wherein the Petitioner was not only acquitted but the trial Court also directed for registration of a case u/s 182 I.P.C. against Bani Singh PW-2 for lodging a false report against the Petitioner.

3. This fact was brought to the notice of Commissioner, Aligarh but ignoring the same, observing that license was cancelled in order to maintain law and order on the recommendation of Senior Superintendent of Police, Commissioner rejected the appeal by order dated 5th May, 2010 and confirmed order of cancellation.

4. Learned Counsel for the Petitioner submitted that the appellate order is clearly arbitrary, based on conjecture and surmises and therefore deserve to be set aside.

5. I have heard Learned Counsel for the parties and perused the record.

6. Initially the case of Respondents appears to be that the Petitioner had used the aforesaid licensed gun in a crime pertaining whereto case crime No. 400 of 2007 under Sections 307 and 504 Indian Penal Code was registered on 23.5.2007. The use of gun in the aforesaid crime is said to be proved by alleging that the firearm was recovered by local police. Thereafter the Respondents proceeded further to allege that Petitioner was required to show his gun but failed hence another case No. 401/2007 under Sections 25 and 30 Arms Act was registered. On account of these two matters, the Station Incharge appears to have submitted a report recommending cancellation of arm license of the Petitioner, which was approved by Senior Superintendent of Police, Aligarh and the two orders impugned in this writ petition were passed.

7. The Criminal case has not only resulted in honourable acquittal of Petitioner but the trial Court has recorded a finding of fact that report was lodged falsely against Petitioner and thus proceedings u/s 182 Indian Penal Code should be initiated against the complainant.

8. That being so, in absence of any order setting aside the above findings recorded by trial Court, this Court has no reason to disbelieve that the aforesaid entire criminal proceedings initiated against Petitioner were fictitious and had no substance at all. This also belied the allegation contained in the suspension order that the firearm was recovered by local police though this fact has not been proved or found correct by the trial Court.

9. Learned Standing Counsel also could not tell, when the fire-arm was already recovered by the police, as mentioned in the order of suspension, then where was an occasion to the Petitioner thereafter to show his firearm to the police on demand and how proceedings under Sections 25 and 30 Arms Act could be made out. It appears that Commissioner in deciding the appeal though confronted with the judgment of trial Court but chose to proceed with the report of Senior Superintendent of Police recommending cancellation of firearm without applying his

mind that the basis of this report has disappeared and there remains nothing and no material at all to form even a subjective satisfaction that firearm of the Petitioner ought to be cancelled. The impugned order of appeal, therefore, clearly based on certain facts and findings, which did not exist at all and at least none has been shown based on some material in the counter-affidavit.

10. It is true that in the matter of question of fire-arm license responsibility of district administration is quite onerous. The District Magistrate and local police is responsible for maintaining law and order and public tranquillity in the district for the area of their jurisdiction, are liable to keep a close watch over the activities of the persons residing within that area and in case any person is found to have some criminal background or is involved in unlawful, unsocial activities, it is open to the competent authority to form opinion as to whether such persons should be allowed to keep firearm within him or not. But this opinion cannot be founded arbitrarily. There has to be some material for formation of such opinion. It cannot be fanciful or imaginary. A report submitted by police officials by itself may not form foundation unless such report is based on some material. Where the basic foundation of report submitted by police disappear, it would result in vanishing the legal value of such report in regard to the recommendation it has made and therefore, any mechanical acceptance and action thereon also would get be vitiated in law.

11. Possession of a fire-arm for the purpose of personal safety is a facet of fundamental right of life and liberty under Article 226 of the Constitution. It cannot be denied on fanciful, conjectural reasons. One cannot lose sight of the fact that law and order maintaining machinery in the State is highly inadequate and the people are heavily supposed to take steps for their personal safety on their own. A judicial notice can be taken of the fact that for the total population of the State being more than about 19.95 crores, the number of police personnel in all the wings available in the State is near about 2 lacs. Per capita the availability of police personnel is almost negligible. In these circumstances, allowing the people to have effective means of their personal safety is of utmost importance. Possession of firearm, therefore, should be a normal condition unless shown otherwise. This ought to be the approach of competent authority under Arms Act while granting license for firearm or renewing or allowing it to continue.

12. Unfortunately, that is not so. The matter of firearm is being dealt with by Respondents in a very fanciful and strange manner having no reasonable nexus with the purpose sought to be achieved. I really failed to understand as to why the Commissioner could not consider the matter in correct perspective while deciding appeal of the Petitioner after decision of Court in criminal case No. 849 of 2008 (Case Crime No. 400/07). This has caused serious prejudice to the Petitioner, inasmuch as, he has been put in a serious peril and his life have been endangered by depriving him of possession of a firearm on unsustainable reasons.

13. The writ petition, in view of above discussion, is allowed. The impugned orders dated 8.7.2008 passed by Addl. District Magistrate (Administration), Aligarh and 5.5.2010 passed by Commissioner, Aligarh Division, Aligarh (Annexures No. 2 and 5 to the writ petition) are hereby quashed. The Petitioner shall be entitled to cost which is quantified to Rs. 25,000/-

14. However, the State of U.P. shall be at liberty to recover the amount of cost from the official(s) concerned, who had passed the impugned orders without application of mind; after making such enquiry, as is permissible in law.