
(2003) 11 AHC CK 0172
In the Allahabad High Court
Case No : C.M.W.P. No. 5282 of 2000

Brijraj Kishore Pandey

APPELLANT

Vs

Commissioner, Allahabad Division and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Arms Act, 1959 — Section 17(3)

Citation : (2004) 1 AWC 448

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Y.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition is directed against the judgment and order dated 30.6.1999, passed by respondent No. 2 by which the arms licence of the petitioner was cancelled u/s 17(3)(B) of the Indian Arms Act and the judgment and order dated 10.1.2000, passed by respondent No. 1 in appeal.

3. The facts as emerge from the records are that the petitioner was attacked in 1982 by some miscreants due to enmity in the village and an F.I.R. was lodged by him under Sections 147, 148, 149, 336, 307 and 323, I.P.C., P.S. Kunda, District Pratapgarh, in said criminal case main accused was convicted for 7 years" R.I. The convict in the aforesaid case came out after serving out the sentence. The petitioner apprehended danger to his life by the aforesaid convict and as well as enmity with some other persons of the village. In the meantime one Rajesh Singh alias Prabhakar Singh, who was also resident of village Sahapur was elected Pradhan and was arrested under the Gangsters Act and was granted bail by the IInd Additional Sessions Judge, Allahabad (Special Judge, Gangster Act) in which the petitioner stood surety for him. The contention of the counsel for the petitioner is that the police under the influence of his enemies

falsely implicated the petitioner that he had fired with his country made pistol on the police party and a false F.I.R. was lodged as he had stood surety for the Pradhan Rajesh Singh. A show cause notice was given to the petitioner which is as under :

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4. The petitioner filed his reply to the show cause notice, inter alia, stating that he was falsely implicated in this case and there is no substance in the allegations made in the notice.

5. Relying upon the averments made in the counter-affidavit it is submitted by the standing counsel that the petitioner has a criminal history and criminal cases are pending against him and that he associated himself with the criminals and helped them and is misusing his firearms licence.

6. There is no averment in the counter-affidavit that petitioner has misused his licensed gun. There is only a mere allegation that he had fired upon the S.I. D. K. Singh with a "katta". The case against the petitioner has not attained finality. The question whether the petitioner is innocent or not or has been falsely

implicated as claimed by him or is in fact a criminal, has not been decided as yet. No person can be said to be criminal and the Court has to presume him to be innocent unless he has been convicted.

7. The averments made in the counter-affidavit are not in consonance with the notice quoted above as there appears to be no averment therein that he had shot any S.I. of police. It is not that gun licence cannot be cancelled during the pendency of criminal case(s) but the reasons and grounds contained in the notice must be serious that cancellation of licence is necessary for public peace and safety. In cases where same result can be achieved by suspension of licence and order for depositing the arms licence, cancellation of arms licence ought not to be resorted to. The power of cancellation of arms licence normally should not be exercised merely when where criminal case(s) is/are said to be pending without any subsequent conduct as in the present case. Cancellation of arms licence is not always a valid ground in all cases where criminal proceedings are pending and each case has to be judged on its own facts and circumstances of fairness and reasonableness,

8. Harassment by police is not unheard of. In the instant case, the petitioner applied for gun licence for purpose of his personal safety due to enmity in village. The petitioner is a Government servant. There is nothing adverse even in his service record to show that he does not bear good moral character except the bald allegation in the counter-affidavit that criminal case is pending against him.

9. For the reasons stated above, the writ petition is allowed. The impugned orders dated 30.6.1999 and 10.1.2000 are quashed. The petitioner may move an application before the District Magistrate for passing appropriate order in the light of the observations made in the body of the judgment. No order as to cost.