

(1996) 08 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 21700 of 1990

H.B. Guruchannabasavaiah

APPELLANT

Vs

District Magistrate, Tumkur and others

RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:

Arms Act, 1959 — Section 21
Arms Rules, 1962 — Rule 47

Citation : (1997) CriLJ 4371

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Smt. M.N. Pramila, for the Appellant; N.K. Ramesh, H.C.G.P., for the Respondent

Judgement

1. An order dated 22nd of June 1990, passed by the District Magistrate, Tumkur confiscating SBBL Gun No. 2130 deposited with the Police by the father of the petitioner is what is under challenge in this writ petition. A mandamus directing the Respondents to return the Gun and renew the Licence issued in favour of the petitioner is also sought.

2. Petitioner's father on K. C. Basavaraj, deposited a SBBL Licensed Gun with the local Police. The reason given for making the deposit was physical weakness of the licensee due to old age. Some time later the petitioner herein made an application to the District Magistrate for release of the weapon in his favour as he had secured a licence from the Sub-Divisional Magistrate Puttur, and was entitled to possess the same. It was also stated that the petitioner was the legal representative of his father Sri. K. C. Basavaraj. The application was considered by the District Magistrate u/s 21 of the Arms Act read with Rule 46 of the Arms Rules and rejected on the ground that the licensee had not taken back the weapon within a period of two years nor had he got his licence renewed. The petitioner and his father both challenged the said order in W.P. No. 18994/89 which came to be allowed by a single Judge of this Court by order dated 11th

December, 1989. This Court held that the order forfeiting the Gun was passed without providing an opportunity of being heard to the petitioners. The matter was accordingly remitted back to the District Magistrate for a fresh order. In compliance, the District Magistrate has passed a fresh order by which he has reiterated the view taken earlier and held that the petitioner herein was not entitled to claim the weapon. The solitary reasons given is that the deceased licensee had failed to claim it back within a period of two years. The explanation given by the petitioner for the failure of the licensee to take back the Gun was found unacceptable as according to the District Magistrate the licensee could have even when he was old and infirm secured the return of the gun and applied for the renewal of the licence in his favour. Aggrieved the petitioner has questioned the order passed by the District Magistrate in the present writ petition.

3. Learned Counsel appearing for the petitioner argued that the forfeiture ordered by the District Magistrate, was on a totally wrong assumption. She urged that the deposit of the weapon was in the instant case not referable to Section 21 of the Arms Act which pertained only to such deposits as were made in cases where the possession of the weapon had become unlawful for any reason whatsoever. It was urged that on the date the deposit was made by the petitioner's father, the possession of the weapon by him was in no way unlawful so as to attract the provisions of Section 21 or result in a forfeiture, in the event of failure of the Licensee to claim back the weapon within two years. The deposit in the instant case was according to the learned Counsel relateable to Rule 47 of the Arms Rules 1962 which provides for deposit of Arms and Ammunition for safe custody otherwise than u/s 21. Rule 47, it was urged, does not provide for forfeiture of the weapon even if the same is not claimed within a period of two years.

4. There is considerable merit in the submissions made by the learned Counsel. Section 21 of the Arms Act, provides that any person having in his possession any Arms or Ammunition, the possession whereof has in consequence of the expiration of the duration of a licence or suspension or revocation of the licence or by issue of a notification u/s 4 or by any reason whatsoever, ceased to be lawful shall without unnecessary delay deposit the same either with the Officer incharge of the nearest Police Station or subject to such conditions that may be prescribed, with licensed dealer or where such person is a member of the armed forces of Union in a Unit Armoury. The language employed in the provision is much too clear to permit any interpretation except that a deposit in terms thereof is possible only if the possession of the Arms or Ammunition has become unlawful for any reason. In other words, a deposit in a case where the possession of the Arms or Ammunition is not unlawful on the date the deposit is made, cannot be related to Section 21. Such a deposit even though not provided for under any other provision of the Act, is nonetheless covered by Rule 47 of the Arms Rules 1962, relevant portion whereof reads thus :

"Section 47 :-

Deposit of arms and ammunition for safe custody (otherwise than u/s 21).- (1)
(a) A person lawfully possessing arms or ammunition may deposit them for safe custody with a dealer holding as licence in Form XIV or in a Police Station or, if he is a member of the armed forces of the Union, in a unit armoury."

5. The provisions of Rule 47(3)(a) provided that in the event of failure on the part of the licensee to get the licence renewed the Arms or Ammunition shall continue to be possessed by the dealer on the authority of his licence or by the Officer-in-charge of the Police Station or the Unit Armoury as the case may be. In case however the licence is not renewed for a period of 3 years after its expiry, the dealer or the Officer-in-charge of the Police Station or the Unit Armoury is required to bring the said fact to the notice of the District Magistrate for such action as he may consider necessary.

6. Rule 47(3) forbids return of the Arms to the owner unless the licence to possess the same is renewed or a new licence obtained for the purpose, while Rule 47(4) provides for payment of fee for the custody of the Arms deposited. From a reading of Rule 47, it is apparent that there is no provision for forfeiture of an Arm deposited by the licensed owner thereof on his failure to renew the licence for a period of 3 years. All that the Rule provides for is that the District Magistrate may in any such case, take such action as may be considered necessary by him. Mr. Ramesh, Government Advocate argued that the District Magistrate on being informed about the failure of the licensee to renew the licence for a period of 3 years can order forfeiture of the weapon. He urged that the expression "shall bring to the notice of the District Magistrate for such action as he may consider necessary" would entitle the district Magistrate to fall back upon the provisions of Section 21(3) of the act and forfeit the weapon to the Government. I cannot agree. I say so precisely for two reasons. Firstly, a provision for forfeiture has to be specific and cannot be implied or adopted by an extended meaning given to another provision like Rule 47(3) of the Arms Rules, in the instant case. Secondly, because if the deposit made by the licence holder is outside the provisions of Section 21 of the Arms Act, it is difficult to see how the District Magistrate can revert back to the same, in search of a power to forfeit the weapon in the event of failure of the licensee to have the licence renewed for a period of 3 years. If Rule 47 makes a distinct provision for deposits outside Section 21, it should have made a specific provision for forfeiture also had the intention been to provide for any such forfeiture. No such provision has been made. The inference is that the Legislature and the Rule making authority treated the two situations to be distinctly different -- one relating to depositing of the Arms, the possession where of has become unlawful and the other cases where the arms are deposited even when their possession was lawful. In the case of the former, the Parliament has in its wisdom provide for forfeiture whereas in the case of the latter, no such provision is made. Suffice it to say that the order passed by the District Magistrate, treating the case to be a case of deposit u/s 21 does not appear to be well founded for it is not disputed that the deposit was not made under Sec. 21 nor was the possession of the weapon

unlawful on the date the same was deposited.

7. In the result, this petition succeeds and is hereby allowed. Order dated 22-6-1990 in No. ARM (1) Cr. 77/89-90 passed by the District Magistrate is hereby quashed, reserving liberty for the petitioner to file an appropriate application under Rule 47 of the Arms Rules 1962, in which event the District Magistrate shall consider and pass appropriate orders on the same in accordance with law and keeping in view the observations made hereinabove.

8. In the circumstances there shall be no orders as to costs.

9. Petition allowed.