
(1990) 08 AHC CK 0036

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ No. 5224 of 1984

Krishna Autar

APPELLANT

Vs

Commissoner of Jhansi Division, Jhansi & Anr.

RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Arms Act, 1959 — Section 17

Citation : (1990) 08 AHC CK 0036

Hon'ble Judges : Palok Basu, J

Final Decision : Allowed

Judgement

Palok Basu, J.—This writ petition has been tiled by Krishna Autar against the judgments and orders passed by the Commissioner Jhansi Division dated 2511984 upholding the order of revocation of Arms Licence of the petitioner by an order of the District Magistrate, Jalaun; dated 281983.

2. Sri Dharampal Singh learned counsel for the petitioner has raised two objections to the orders impugned. Firstly, the basic charge against the petitioner was that he was involved in a case for which he was prosecuted under Section 147/148/149/452/302, IPC and Section 27 of the Indian Arms Act which also arises out of the said incident. The pendency of this case was noted by the District Magisterial Jalaun IInd he did not wait till the final decision of the trial and, therefore, the order of the District Magistrate was vitiated. Secondly by the time the appeal of the appellant matured for hearing before the Commissioner, the petitioner hid earned an order of acquittal from the Special Judge (Dacoity Affected Area) on 9121983 relating to the two specific aforesaid charges one relating to the murder and the other relating to illegal use of the Firearm, the licence of who was granted, copy of which has been fited alongwith rejoinderaffidavit. anode that it was specifically brought to the notice of the Commissioner, that the petitioner stands acquitted under the two specific charge1; mentioned above and. therefore, the basis of the revocation order has vanished. In this view, the Commissioner" should have allowed the appeal. Sri

Krishna Mohan learned Standing Counsel has argued that there is factual mistake in the argument of Sri Singh. He says that as regards the charge under Section 17 Arms Act. it appears to be a separate case. Then it was argued the there is no proof that the certified copy of the order of acquittal was produced before the Commissioner. In view of these arguments, it is said that the writ petition should be dismissed.

3 After considering the matter and hearing the learned counsel at length the only option is to allow this writ petition It has been noted by the Commissioner in the impugned judgment that the petitioner stood acquitted with regard to the charges under Section 147/148/149/452/302 IPC. His judgment does not show that the certified copy of the trial court judgment was not produced before him. Quite contrary to this, he observed that mere acquittal will not entitle the appellant to get the order of the District Magistrate set aside. . Consequently, it follows that the Commissioner has not applied his mind at all on the question of being acquitted and absence of the basis under which the revocation of the Arms licence was ordered by the District Magistrate Jalaun, It is settled law " that where the initiation of a crinoline" case and that too of serious nature is made the basis of cancellation/suspension of Arms Licence and the licenceholder gets an acquittal, the very foundation of the action of the cancellation would be treated as nonexisting. Therefore, unless there is some other report or material the only ground of initiation of the said criminal case against the petitioner cannot sustain an order of revocation of the Arms licence". This view is supported by the two Divisions Bench Decisions of this Court reported in the Case of Udai Vir Singh v. District Magistrate Farrukhabad, 1981 AWC page 237 and Ram Bodh v. State of U. P., 1985 AWC (II) page 40.

4. Sri Krishna Mohan learned standing counsel then said that the matter should go back to the Commissioner once again, so that he may be asked to apply his mind to the merits in the appeal all over again. While in some cases this order may. be necessary, in the instant case the whole exercise will be futile and is bound to cause undue harassment to the petitioner. The Commissioner had noted the acquittal in the matter relating Sections 147/148/149/452 302, IPC nonmentioning Section 27 of the Arms Act does not in any way affect the petitioner because the copy of the Judgment filed by him before this Court indicates that there was one trial relating to Section"147/148/149/452/302, IPC and Section 27 of the Arms Act as both the Sections were applied for the same incident.

5. In view of the aforesaid discussions, this writ petition succeeds and is allowed. The order of the District Magistrate dated 2851983 and that of the Commissioner. Jhansi Division. Jhansi (Annexure4) dated 2511984 passed .in Appeal No. 52/198283 and quashed.