
(2019) 11 MP CK 0266

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4060 Of 2019

Kumersingh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 294, 306, 323, 506
Arms Act, 1959 — Section 17(3), 17(3)(a)

Citation : (2019) 11 MP CK 0266

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Rajpal Singh Bais, Abhishek Tugnawat

Final Decision : Disposed Of

Judgement

By this petition, the petitioner has challenged order dated 13/02/2018 passed by the Additional District Magistrate rejecting the petitioner's application for renewal of the arms license. He has also challenged the order dated 22/03/2019 passed by the Additional Commissioner dismissing the appeal against the rejection order.

The case of the petitioner is that the arms license was issued to the petitioner in the year 1988 and was subsequently renewed from time to time but by the impugned order without any justifiable reason, renewal of the arms license has been refused.

Learned counsel for the petitioner submits that the criminal case which has been mentioned in the impugned order had already resulted in acquittal and that case did not relate to use of fire arm.

As against this, learned counsel for the respondent referring to the circular dated 26/03/2011 has submitted that unless there is a threat to a person, arm license cannot be granted.

Having heard the learned counsel for the parties and on the perusal of the

record, it is noticed that undisputedly after the initial grant of license in the year 1988, the renewal was done from time to time. By the impugned order, the Additional District Magistrate has rejected the renewal application on the sole ground that offence under Section 147, 323, 294, 506 of the IPC in crime No.2/98 was registered against the petitioner in the police station Kanad, District Agar Malwa. The record reflects that by the judgement dated 03/04/1999, the petitioner was acquitted of the said offence by the Special Sessions Judge, District Shajapur in session trial No.24/98. The said judgement further reveals that in that case, there was no allegation of use of any fire arm. That apart, subsequent to the said judgement without any objection, the license was renewed from time to time up to 2017.

The Division Bench of this Court in the matter of Virendra Singh Vs. State of M.P. and others reported in 2012 (4) MPLJ 144, in the similar circumstances has held that :-

"7. We have perused the charge sheet filed against the appellant in Crime No.34/2008 for an offence punishable under section 306 read with section 34 of Indian Penal Code. The criminal case has been registered against five persons, i.e. Phool Singh, Surendra Singh, Virendra Singh, Ramuna and Bhogi. The allegation against the appellant and other accused persons is that they had not treated deceased Laxmi properly, hence, she committed suicide. There is no allegation against the appellant that he had used his gun in commission of the offence. The offence has been registered against all the family members and the case is still pending. Except this offence, no other criminal offence has been registered against the appellant.

8. Section 17(3)(a) of the Arms Act, 1959 gives power of the licensing authority to suspend or revoke an arm license on certain grounds. The relevant section is as under:-

"17(3)(a). The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence,? (a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act"

9. The Full Bench of Patna High Court in the case of Kapildeo Singh Vs. State of Bihar and others, AIR 1987 Patna 122, has held as under in regard to revocation or suspension of arm license, on account of registration of a criminal case:-

"A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of the latter after notice and hearing of the explanation such

action may. well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons."

On the basis of Full Bench decision of Patna High Court, it is clear that use or employment of the licensed weapon in the alleged crime, might be a relevant factor in deciding the revocation or suspension of arm license.

10. In the present case, there is no allegation or evidence against the appellant that he had used his gun in the commission of offence. The allegation against the appellant is that he along with other family members did not treat the deceased properly in the house, hence, deceased committed suicide.

11. Learned Single Judge relied on the judgment of Division Bench of this Court reported in ILR (2011) MP 2964, Ramkumar Sharma Vs. State of M.P. and others. However, the aforesaid judgment is in regard to refusal to grant arm license and in that case, three criminal cases were registered against the applicant.

12. In the present case, only one criminal case for the offence under section 306 read with section 34 of Indian Penal Code has been registered against the appellant. Another fact which has been mentioned by the District Magistrate in the order of revocation of arm license that the appellant did not deposit the gun after suspension of arm license, is contrary to the fact that the appellant already pleaded that he had deposited the gun at the police station concerned after suspension of arm licence.

13. Looking to the aforesaid facts of the case, in our opinion, the revocation of arm licence of the appellant on account of registration of Crime No.34/2008, at police station Endori, District Bhind, is contrary to law."

Same is the view taken by the coordinate Bench in the order dated 21/08/2018 passed in WP No.8919/2016 in the case of Rakesh Pandey Vs. State of M.P. and others.

So far as the reliance on the conditions of the circular dated 26/03/2011 (Annx.R/2) by the learned counsel for the respondent is concerned, the rejection of the renewal application of the petitioner is not on the grounds of the conditions mentioned in the circular. Hence, the respondent cannot be permitted to supplement the grounds of rejection.

In view of the above analysis, the impugned orders dated 13/02/2018 and 22/03/2019 cannot be sustained and are hereby set aside with a direction to the competent authority to decide the petitioner's application for renewal of the arms license afresh in accordance with law.

Misc. petition is accordingly disposed off.

C.c. as per rules.