
(2014) 07 MP CK 0222
In the Madhya Pradesh High Court
Case No : WP No. 2662/2011 (S)

Leeladhar

APPELLANT

Vs

State of MP

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Arms Act, 1959 — Section 17
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 323, 325

Citation : (2014) 07 MP CK 0222

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : Pavan Dwivedi, Advocate for the Appellant; Prabal Solanki, Government Advocate, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

P.K. Jaiswal, J.—They are heard.

By this writ petition under Article 226 of the Constitution, the petitioner is assailing the order dated 08/02/2011 (Annexure P-1) passed by the Commissioner, Chambal Division, Morena and the order dated 27/12/2010 (Annexure P-2) passed by the District Magistrate, Morena, whereby arms licence of the petitioner which was granted somewhere in the year 1990, has been cancelled.

2. Brief facts of the case are that the petitioner in connection with Crime No. 46/1994 was convicted by learned Judicial Magistrate First Class, Jaura, District Morena for the offence punishable u/s 323 of IPC and sentenced to suffer three months RI with fine of Rs. 500/-. Against the order passed by the Judicial Magistrate First Class, the petitioner preferred an appeal before learned Third Additional Sessions Judge, Morena. The learned appellate Court in Criminal Appeal No. 376/2004 vide judgment dated 24-01-2005, modified the order passed by the learned Magistrate by upholding the conviction of the petitioner for

the offence punishable u/s 323 of IPC and reduced the sentence till rising of the Court and enhanced the fine amount of Rs. 500 to Rs. 800/- with default stipulation.

3. It is submitted by learned learned counsel for the petitioner that the arms licence was granted to the petitioner in the year 1990. After registration of Crime No. 46/1994, arms licence of the petitioner was suspended on 16-10-1998 by the District Magistrate and during pendency of trial before the learned Magistrate, arms licence was cancelled on 27-12-1998 by considering the fact that the petitioner has violated the arms licence and as per clause(b) of sub-section(3) of Section 17 of the Arms Act, 1959 [hereinafter referred to as "the Act"]. It is necessary for the security of public peace or public safety and, therefore, arms licence of the petitioner was cancelled.

4. It is further contended by learned counsel for the petitioner that the petitioner was never misused his arms licence from the very inception nor during pendency of period of suspension he was used the same and there was no danger or threat to the public security or peace or any complaint to this effect was lodged by any one against him. Learned authority without considering the provisions of Section 17 of the Act, committed an error in dismissing the appeal and upholding the order of cancellation of arms licence. In support of his contention, he drew my attention to the decision of this High Court in Badshah alias Taj Mohammad Vs. State of M.P. and another, . Relevant portion (paragraphs 10 to 15) reads as under:-

There is absolutely no material on record to establish the petitioner used or misused the firearm and that possession of firearm poses a threat to the security of the public peace and public safety. There is no specific provision in Arms Act or elsewhere that no licence is to be issued when criminal cases are pending against the applicant. Mere apprehension of the District Magistrate that the licensed firearm may be misused by the petitioner has no foundation and does not provide a ground for revoking the licence of the firearm. Moreover, it is quite clear that the licensing authority did not take into consideration the effect of the termination of criminal cases while passing the impugned order. In view of this, the earlier order dated 8.1.2001 cannot form a basis for passing the impugned orders in the year 2005 when admittedly, the criminal cases against the petitioner were not pending. Thus, on the date of impugned orders the grounds assigned for cancellation of licence earlier on 8-1-2001 on account of pendency of criminal cases against the petitioner were non-existent and the impugned orders are, therefore, found to be unsustainable in law.

5. With the aforesaid, learned counsel for the petitioner has submitted that the impugned order be quashed and respondent No. 2 be directed to renew the arms licence, which was granted to the petitioner in the year 1990 forthwith.

6. On the other hand, learned Government Advocate has submitted that an offence was registered against the petitioner in the year 1994 punishable under

Sections 325 and 323 of IPC and, therefore, he was convicted by learned Judicial Magistrate First Class u/s 323 of IPC. In appeal, the aforesaid order was modified by learned appellate Court by upholding the conviction of the petitioner u/s 323 of IPC and sentenced him till rising of the Court. The authorities have not committed an error in cancellation of arms licence. Hence, prayed for dismissal of this writ petition.

7. Considering the facts and circumstances of the case and also the fact that it is not a case of the respondents that the petitioner ever misused the arms licence granted to him in the year 1990 nor during the period of suspension, he misused the arms licence or committed any crime. There is no material on record to establish that the petitioner has used or misused the firearm. Even in the return, the respondents-State have not made out any ground to cancel the arms licence of the petitioner under the provisions of Section 17 of the Act.

8. In view of the aforesaid and the law laid down by this High Court in the case of Badshah @ Taj Mohammad (supra), I am of the view that the impugned orders Annexure P-1 and Annexure P-2 are liable to be quashed and accordingly, same are hereby quashed. The respondent No. 2 is directed to consider the application of the petitioner after giving opportunity of hearing in accordance with law, keeping in view the observations made in the case of Badshah @ Taj Mohammad (supra), within a period of one month from the date of receipt of certified copy of this order, by passing a speaking order.

9. Writ petition stands disposed of. No order as to costs.