

(1988) 05 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16118 of 1983 & Civil Miscellaneous Writ Petition No. 16118 of 1983

Malkhan Singh and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-05-1988

Acts Referred:

Arms Act, 1959 — Section 17
Arms Rules, 1962 — Rule 52
Penal Code, 1860 (IPC) — Section 302, 364

Citation : (1988) 2 AWC 905

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : R.R. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

Palok Basu, J.—Malkhan Singh and Ram Hari have preferred this writ petition against the two orders dated 25-1-1981 passed by the District Magistrate, Mainpuri one in Case No. 25/1 of 1980 cancelling the gun licence of Malkhan Singh and the other in case No. 25 of 1980 cancelling the rifle licence of Ram Hari. Both the Petitioners are brothers. It appears that acting on the reports sent by local police, the District Magistrate revoked the licences of both the brothers after issuing show-cause notices to them which were duly replied. Two appeals were filed before the Commissioner by the Petitioners who by his judgment and order dated 30th August, 1982, upheld both the orders of revocation of licences. Hence this writ petition.

2. I have heard Sri Raja Ram Yadav, learned Counsel for the Petitioners in detail. Counter affidavit on behalf of the opposite parties has been filed and I have heard Sri M.M. Chaturvedi, learned Standing Counsel. Rejoinder affidavit has also been filed which has been perused. Hence this writ petition is being finally disposed of at the admission stage as desired by the learned Counsel for the

parties.

3. The first argument of Sri Raja Ram Yadav is that the appellate court proceeded to dismiss the appeal on the ground that as against the Petitioner No. 2 there was an order of conviction u/s 302 IPC and, as against the Petitioner No. 1 there was a First Information Report u/s 364 IPC. On the basis of these two materials alone the Commissioner concluded that the case is covered under clause (b) of Section 17 of the Arms Act. The learned Counsel for the Petitioner argues that under the given circumstances Clause (b) shall not be available for revoking the said licences particularly as against Petitioner No. 1 who has since been acquitted by a competent court. The learned Standing Counsel on the other hand relies basically on the original order passed by the District Magistrate wherein ii; has been stated that the Petitioner No. 1 has left district Mainpuri and it was an additional fact that a first information report was also lodged against him.

4. A perusal of the order passed by the District Magistrate, Mainpuri, indicates that he cancelled the licence of Petitioner No. 1 on the ground that the Petitioner No. 1 has deserted. district Mainpuri and is living in another district. He also took note of the fact that in that district a criminal case u/s 364 IPC was initiated against the said Petitioner. That being the position, it is more than apparent that the safeguards which the district authorities are to have concerning the persons who are licence-holders within that district was no more available to the District Magistrate of Mainpuri as regards Petitioner No. 1. Reference may be made to the various sections in the Arms Act and the Rules whereby periodical inspection of the arms and the licences can be done. Under the circumstances, when it was brought to the notice of the District Magistrate that the Petitioner No. 1 has deserted district Mainpuri and migrated to another, the local police rightly initiated cancellation proceedings and the District Magistrate, Mainpuri, was thus fully empowered under the law to revoke the said licence on that ground alone. However, the lodging of the first information report u/s 364 IPC in the other district was used by him as an additional factor. In this connection a mention may be made to Rule 52 which provides that as soon as an arms licensee leaves one district and goes to another he shall inform the authorities of the latter district of his migration. A perusal of the other provisions in the Act and the Rules indicates that the police verification is a must before grant of licence to a citizen.

5. A perusal of the averments made in the writ petition indicates that the basic grievance of the Petitioners was to the effect that the lodging of the FIR u/s 364 IPC as against the Petitioner No. 1 and the order of conviction u/s 302 IPC as against the Petitioner No. 2 could not have been made the basis of revoking licences. The Petitioners have not laid any foundation for challenging the finding of fact recorded by the District Magistrate that the Petitioner No. 1 has ceased to be a resident of district Mainpuri. Sri Yadav stated with commendable fairness that his main attempt was to get a relief insofar as Petitioner No. 1 is concerned because unless and until the conviction as regards Petitioner No. 2 is set aside,

the grounds for revoking licence under Clause (b) do exist. Therefore, Sri Yadav brought to the notice of this Court the fact that Malkhan Singh has since been acquitted in the case u/s 364 IPC by a competent court, clause (b) should not and can not be permitted to be used by the District Magistrate. On the facts and reasons stated above it is more than clear that not only clause (b) but even clause (a) was available to the District Magistrate in dealing with the case of Petitioner No. 1 which clause provides that licence can be revoked "for any reason" found by the District Magistrate as sufficient to render the licences "unfit".

6. Since the Commissioner was writing a Judgment of affirmance he apparently referred to those arguments which were raised before him. The fact nonetheless remains that he had upheld the order of the District Magistrate in which the basic ground is that the licence of the Petitioner No. 1 was being revoked on account of the fact that he has voluntarily ceased to be resident of Mainpuri and the Petitioner No. 2 stands convicted u/s 302 IPC.

7. The learned Counsel for the Petitioners has relied upon two decisions reported in the cases of Udai Veer Singh v. District Magistrate, Farrukhabad 1981 AWC 146 and Masiuddin Naimuddin v. Commissioner, Allahabad Division 1972 AWR 383. In both these cases the question in controversy was whether merely because a first information report was lodged or some proceedings ensued in the court resulting in an appropriate order, the District Magistrate on those facts could proceed to take action u/s 17(b). In the instant case, however, the need to go into and apply the details of those decisions does not arise for the simple reason that the District Magistrate was basically considering the question of that Petitioners leaving Mainpuri. The other two decisions reported in the cases of Abdul Ghani v. State of U.P. 1973 ACC 5 and Anand Prakash Pandey v. Commissioner, Faizabad Division Faizabad 1986 ACrR 560 (Lucknow Bench) deal with similar situations which are referred to in the earlier two Allahabad Cases but they do not help the Petitioners in taking the case out of the purview of Clause (a) of Section 17 Arms Act. It is proper to mention here that neither the show-cause notice nor the reply to it has been filed as annexures to this writ petition and as such no grounds about any procedural defect can be permitted to be raised.

8. Under the circumstances the petition is devoid of any merit and is dismissed accordingly, but without costs.