
(2008) 08 PAT CK 0042
In the Patna High Court
Case No : LPA No. 586 of 2008

Narendra Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Arms Act, 1959 — Section 17, 17(3), 17(3)(a), 18
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 153

Citation : (2009) 1 PLJR 15

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Ajay Kumar, for the Appellant; Mohan Kumar Singh for the Respondent Nos. 3 to 7, for the Respondent

Judgement

1. We heard the counsel for the appellant Mr. Ajay Kumar and the Government Counsel Mr. Mohan Kumar Singh. That the appellant is accused in a criminal case (Sessions Trial No. 517 of 1992) is not in dispute. That he has been charged of the offences punishable under Sections 147, 148, 149, 153A, 153, 295, 295A, 297, 298, 447, 427, 188, 120B, 232, 337, 307, 353 and 505 of the Indian Penal Code is also not in dispute. His license of Rifle No. 91-Ag-0599 was cancelled by the District Magistrate, East Champaran, Motihari, after giving a show cause notice to him.

2. The licence seems to have been cancelled by the District Magistrate in exercise of the power conferred on him u/s 17(3)(a) of the Arms Act, 1959 (for short, "the Act 1959"), purportedly for the reason that he was found unfit for a licence being accused in the aforesaid criminal case.

3. The order dated 25th May, 1992, whereby the licence issued to the appellant was cancelled by the District Magistrate, Motihari, was challenged in an appeal before the Commissioner, Tirhut Division, Muzaffarpur, u/s 18 of the Act 1959. The appeal, too, has been dismissed by the order dated 7th January, 2004.

4. The appellant filed writ petition challenging the aforesaid two orders. However, the Single Judge by the impugned order dated 23rd June, 2008 has dismissed the writ petition observing that he will have to wait the outcome of the trial in the criminal case.

5. The counsel for the appellant heavily relies upon a Full Bench decision of this Court in the case of Kapildeo Singh vs. State of Bihar, 1987 PLJR 385. He would submit that the criminal case against the appellant is not for illegal use of the said firearms by the appellant.

6. In the case of Kapildeo Singh, the issue before the Full Bench was whether the registration and pendency of a criminal case for a major or capital offence justify suspension or revocation of licence under clause (a) of sub-section (3) of Section 17 of the Act 1959.

7. Dealing with the aforesaid question, the Full Bench held thus:-

" 9. Now it is true that sub-section (3) does not in terms provide that the pendency of a criminal charge is a ground for the revocation of licence. However, it is equally true that it is not possible for the legislature to conceive every situation in the future which may render the suspension or revocation of a licence granted earlier necessary. It is, therefore, that the residuary discretion is left in the licensing authority. On this score, the language employed is again of the widest amplitude. Clause (a) warrants revocation if the licensing authority is satisfied that the holder of the licence " is for any reason unfit for the licence under the Act".

10. Now the employment of such phraseology in the statute by the framers can leave no matter of doubt that a wide residuary discretion has been vested in the licensing authority to revoke provided it is satisfied that the holder is unfit for the licence under the Act. The issue, thus, is whether the pendency of a major or capital crime case may not, in the opinion of the District Magistrate, satisfy him that such a person is unfit for holding the licence further. Plainly enough such discretion given by the statute cannot be put in a straitjacket. It cannot possibly be said that in a particular case the implication of the holder in serious or horrendous capital crime may not furnish an adequate ground for the licensing authority for being satisfied that the former holder of the weapon is now unfit for the privilege of the licence granted under the Act. This is more so in the light of the fact that sub-section (1) requires the licensing authority to give notice in writing to deliver up the licence to it within such time as may be specified in the notice in the event of variation, suspension and the revocation of licences. That would invariably give an opportunity to the licensee, as in the present case, to show some cause against such action. It is after consideration of this explanation that the licensing authority may, on the overall circumstances, be satisfied from the nature of the case that the person is now unfit for continuing as a licensee for arms. A further safeguard is provided by sub-section (5) of Section 17. The licensing authority must record in writing reasons therefor and also furnish to the

holder of the licence on demand a brief statement of the same unless in exceptional cases he is of the opinion that it will not be in the public interest to furnish such statement. Nevertheless the requirement of recording reasons in writing is inflexibly mandatory. Therefore, it cannot be easily said that the subjective satisfaction of the licensing authority hedged in by the statutory requirements cannot be exercised on the basis of the pendency of the serious or capital criminal charge. If such subjective satisfaction has been broadly and reasonably exercised, to my mind, it would come within the parameters of the statute under clause (a) of sub-section (3) of Section 17."

8. The counsel for the appellant, however, presses into service the observations made by the Full Bench in paragraphs 1 of the report and that reads thus:-

"11. 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 u/s 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. It bears repetition that subsection (3) puts the matter in the subjective satisfaction of the licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised."

9. It may be observed that the observations made in paragraph-11 are by way of note of caution. As a matter of fact, this is how paragraph-11 begins. The ratio of the decision is that revocation/ cancellation of licence u/s 17(3) depends on subjective satisfaction of the licensing authority and if such subjective satisfaction has been broadly and reasonably exercised, the case would be covered u/s 17(3)(a) of the Act 1959.

10. It has also been held by the Full Bench that there is no impediment for the licensing authority in exercising the power u/s 17(3)(a) on the basis of pendency of a criminal case for a major or capital offence. However, it is observed that the use of weapon in the alleged incident might well be relevant and added factor for consideration in exercise of the discretion of the licensing authority.

11. In so far as the present case is concerned, the appellant is accused of diverse offences, maximum punishment of which ranges from one year rigorous imprisonment to life imprisonment. He is alleged to have participated in mob and communal violence. The allegation is that a mob of Hindu community was involved in violence of the dispute in respect of a piece of land adjacent to a graveyard (Kabristan).

12. The appellant is, apparently, an accused in a criminal case of major offence(s) and in the background in which the incident occurred, if the District Magistrate formed his opinion that this renders the appellant unfit for a licence under the Act 1959, the subjective satisfaction so arrived at by the licensing authority cannot be said to be vitiated by any legal error.

13. In any case, the interest of the appellant has been protected by the Single Judge by observing that based on outcome of the trial in the criminal case, he may apply to the concerned authority for an appropriate order in relation to cancellation of licence. By the order of the Single Judge, as a matter of fact, the order of the licensing authority has been made provisional subject to the outcome of the trial in the criminal case and further liberty has been provided to the appellant to apply to the concerned authority for appropriate order with regard to the cancellation of licence. This, in our view, adequately protects the interest of the appellant justifying no interference in the order of the authorities under the Act of 1959.

Letters Patent Appeal stands disposed of, accordingly.