

(2008) 05 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 17981 of 2005

Rajeshkumar Hashmukhbhai Thakkar

APPELLANT

Vs

The State of Gujrat and Another

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 169, 173[8]

Penal Code, 1860 (IPC) — Section 307, 394, 426, 427

Citation : (2008) 05 GUJ CK 0055

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : RK Mishra, for the Appellant; Vinay Pandya, Asstt. Government Pleader, for the Respondent

Judgement

C.K. Buch, J.—Heard Mr. R.K. Mishra, learned Counsel appearing for the petitioner and Mr. Vinay Pandya, learned Asstt. Govt. Pleader appearing for the respondents.

2. The petitioner, invoking jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of appropriate writ, order or direction, more particularly, praying for quashing and setting aside the order dated 11th July, 2001 [Annexure:G page 43 of the petition] passed by the Deputy Secretary, Home Department, Ahmedabad confirming the order dated 6th August, 2004, passed by the Police Commissioner, Ahmedabad City.

3. Undisputedly, on the date of the order, the petitioner was holding valid license under the Arms Act, being License No. 249, Amraiwadi. However, the petitioner was served with a notice to show cause in the month of May, 2001 on the ground that he is accused of a serious offence punishable under Sections 307 394 426 427 of IPC and the offence punishable u/s 25[i][c] of the Arms Act. The offence was registered with Bapunagar Police Station, being I CR No. 70/2001.

4. Mr. Mishra has placed reliance on one decision of the Allahabad High Court in

the case of Ram Murari Madhukar Vs. District Magistrate, Sitapur, Say of the petitioner is that during the course of investigation, the police found that there is no substance in the allegation made in the complaint. Further investigation into the crime as per the scheme of Section 173[8] of Code of Criminal Procedure [for short "Code"] was also ordered. The investigating officer had ultimately submitted his report. The Chief Metropolitan Magistrate, Ahmedabad accepted the report submitted u/s 169 of Cr.P.C. and decided to discharge the accused. The order of cancellation of license was based only on filing of the complaint at Bapunagar Police Station. When the police found that there was no substance in the complaint, then, obviously, the order of cancellation of license would not sustain. According to Mr. Mishra, as the license was to expire, formal renewal application was submitted in the year 2003, but the same was not accepted considering the fact that earlier, the license has been cancelled. This logic does not sound well, more particularly in view of the order dated 21st May, 2005 passed by the appellate authority and therefore, the application was required to be allowed. But as the request for renewal of license was not accepted by the authority, the petitioner can be permitted to apply for license afresh as if his license was never cancelled or revoked by the authorities.

5. The petitioner shall apply for license afresh as if his license was never cancelled or revoked by the authorities. If such application is made, the same shall be considered on its own merits without being influenced by the orders passed earlier by the authorities as there is no criminal case pending against the petitioner. Till the authority decides the application for license that may be submitted by the petitioner, the weapon in question shall remain with the State armoury. Licensing authority shall decide the application for renewal or fresh license, within 60 days from the date of receipt of the application. Order and direction accordingly.

6. With the above observations and directions, the present petition stands disposed of as partly allowed. Rule is made absolute in the above terms. Direct service is permitted.