

(1954) 01 PAT CK 0002

In the Patna High Court

Sudhansu Kanta Acharyya

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-1954

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (1954) CriLJ 951

Hon'ble Judges : Ramaswami, J;Choudhary, J

Bench : Division Bench

Judgement

Ramaswami and Choudhary, JJ.—In this case the petitioner Maharaj Kumar Sudhansu Kanta Acharyya has moved this Court for a writ in the nature of certiorari to quash the proceedings taken against the petitioner by the Deputy Commissioner of Ranchi for cancellation of arms licences under the provisions of Section 18, Arms Act (Act 11 of 1878).

2. From the affidavit of the petitioner it appears that on 30-1-1953 the Deputy Commissioner of Ranchi sent the following notice:

Whereas at the time when a dacoity was committed at 10 P. M. on 11-11-1952 in the house of one Suresh Chandra Chakravarty, on the Kanke Road, Ranchi, which is close to your residence the "Sunrise" you were in possession of eleven fire-arms, taut you did not make a show of them though there were cries and alarms raised by the victims and that it took place in the early hours of night when you and your family members and servants were not asleep and a torch was flashed at the place of occurrence from the upper storey of your residence occupied by you personally. That you are very friendly with one H, N, Aikat Jigga of Circular Road, Ranchi, who has been suspected in a burglary case vide Kotwali P. S. Case no. 28 (11) u/s 457/380, I. P. C.

That both you and H. N. Aikat exercise great influence over the local Adibasis some of whom are suspected to have participated in the com-mission of the the aforesaid dacoity.

Under the circumstances you are called upon to show cause by. 23-2-1953 why your arms licences should not be cancelled.

The case of the petitioner is that for the last twenty years he has been holding licences for fire-arms issued by the State Government of Bengal. The father of the petitioner, the late Maharaja Sashi Kant Acharya of Mymensingh, had played a notable part in public life and had been exempted from taking licence under the Arms Act. The petitioner and his two brothers have inherited the Mymensingh estate of which the total income was about 30 lacs per year.

The petitioner has alleged in his affidavit that he has no friendship with Mr. H. N. Aikat, but, on the contrary, there has been litigation, both civil and criminal, between the two families.

As regards the occurrence which took place on the night of 11-11-4952 the case of the petitioner is that he had no knowledge that a dacoity was being committed in the house of Suresh Chandra Chakarvarty. So far as he was aware the occurrence was more in the nature of theft than professional dacoity and there was no warrant or justification for the show or use of fire-arms.

The third ground mentioned in the notice is that the petitioner and Mr. H. N. Aikat exercised great influence over the local Adibasis "some of whom are suspected to have participated in the commission of the dacoity". The argument advanced on behalf of the petitioner is that the allegation is too vague. The petitioner has however stated that he has no influence over the Adibasis though he is respected in the locality.

3. No counter affidavit has been filed in this case on behalf of the State of Bihar.

4. The main argument of Mr. P. R. Das in support of the rule is that the proceeding started against the petitioner u/s 18, Arms Act is without jurisdiction since there is no statement made on behalf of the Deputy Commissioner that the cancellation of the licences is necessary for the security of the public peace.

The argument of Mr. P. R. Das is based upon Section 18 of the Act which states-

Any licence may be cancelled or suspended - (a) by the Officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district or Commissioner of Police in a Presidency town, within the local limits of whose jurisdiction the holder of such licence may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary, for the security of the public peace to cancel or suspend such licence....

It is true that under the terms of this section, power is given to a Magistrate or Commissioner to cancel the licence

if he considers for reasons, to be recorded in writing, that it is necessary for the security of the public peace to cancel such licence.

But the power of cancellation granted u/s 18 is not untrammelled.

The preliminary condition for the exercise of the statutory power is that the authority must "for reasons to be recorded in writing" deem it necessary for the security of the public peace to cancel the licence. That is an imperative condition and not merely directory. The statute conferring the power has expressly laid down condition for the exercise of that power. That is the imperative condition upon which the jurisdiction of a Magistrate depends.

In the present case the Deputy Commissioner has not expressly stated in the notice that it was necessary for the security of the public peace to cancel the licences. It cannot be said that as a matter of implication the Deputy Commissioner has complied with the condition, for none of the grounds mentioned in the notice suggests that it was necessary for the security of the public peace that the licences should be cancelled. None of the grounds stated in the notice has any connection or relevance on the question of the security of the public peace. In the eye of law, therefore, it must be taken that the Deputy Commissioner has not given any reason at all.

In this connection the decision in - "Sadler v. Sheffield Corporation" (1924) 1 Ch. 483 (A), and of the Court of Appeal in - "The King v. Board of Education" (1910) 2 K B 165 (B) may be seen. It is manifest that in this case the essential condition prescribed u/s 18 has not been satisfied and that the Deputy Commissioner has exceeded his jurisdiction in starting the proceedings.

It should be remembered that High Court is not a Court Of Appeal from the authority constituted under the statute. The Court cannot substitute itself in place of that authority and examine the sufficiency of the reasons for the cancellation of the licence. But the action of the authority can be challenged in the Court in a strictly limited class of cases. The Court is entitled to interfere if it is shown that the authority has acted in excess of its jurisdiction. In such a case the court is entitled to investigate the action of the authority in order to find out whether that authority has acted within the ambit of its jurisdiction.

5. For the reasons already stated we think that the Deputy Commissioner has exceeded his jurisdiction in the present case, for the essential condition prescribed u/s 18 has not been satisfied. In our opinion a writ in the nature of certiorari ought to be issued to the Deputy Commissioner of Ranchi quashing the proceeding"s started against the petitioner u/s 18, Arms Act.

6. There are authorities in support of the principle that if the condition imposed by a statute is of a peremptory character the proceedings of the authority empowered under the statute are wrong "ab initio" and without jurisdiction.

In - "McIntosh v. Simpkins" (1901) 1KB 487 (C), an affidavit, in support of an application for leave to issue a judgment summons out of the district of county court in which judgment had been obtained, stated that the defendant lived in a house apparently of the yearly value of ?60 and carried on business as a builder,

but it did not state any circumstances shewing that the business was profitable, or that the defendant had means to pay, nor did it state whether the defendant was married and if so whether he had children. The county court judge gave leave to issue the summons.

It was held by the Court of Appeal that the affidavit was not in accordance with the statutory requirements and was therefore insufficient to give the County court judge jurisdiction under O. 25, R. 14A, and that a writ of prohibition must be issued quashing the proceedings.

The principle is reiterated in another decision, - "Alderson v. Palliser" (1901) 2 K B 833 (D).

7. For the reasons we have expressed we think that this rule should be made absolute and a writ in the nature of certiorari should be issued to the Deputy Commissioner of Ranchi quashing the proceeding started against the petitioner for cancellation of the licenses u/s 18, Arms Act. The application is accordingly allowed.