
(1955) 09 CAL CK 0015
In the Calcutta High Court
Case No : Civil Revn. Case No. 2197 of 1955

Syed Shah Jafrul Islam	Vs	APPELLANT
District Magistrate, Hooghly and Another		RESPONDENT

Date of Decision : 05-09-1955

Acts Referred:

Arms Act, 1959 — Section 18

Citation : AIR 1956 Cal 543 : 60 CWN 416

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Nagendra Nath Bose, for the Appellant; Nirmal Chandra Chakraborty and Smriti Kumar Roy Choudhury, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:

2. The petitioner applied for and obtained from the District Magistrate, Hooghly, in 1934, a gun licence being licence No. 81/66 in respect of S.B.B.L. Gun No. 27232. This licence was being renewed from year to year. In the year 1953, the petitioner was also granted another licence No. 211, for a 32 Bore Revolver No. A-63460. This licence has also been renewed from year to year. On 20-8-1954, the petitioner was served by a notice issued by the District Magistrate, Hooghly, which is as follows:

"Whereas it appears that you being holder of fire-arm licence did not come out and made no attempt to resist the dacoits who raided the house of Sri Ashutosh Pal of the same village on 13-7-54 though requested by Chowkidar Kishori Malik and another chowkidar while the dacoity was in progress and if you would have come out this dacoity could have been averted.

You are, therefore, directed to show cause before me within 15 days from the receipt of the notice why your licences should not be cancelled."

3. The petitioner showed cause. He, of course, did not admit the facts as stated in the notice. According to the petitioner, his house is far away from the place

where the dacoity took place and he says that at the dead of night he woke up from sleep on hearing sounds of distant gun shots and came out of his house as far as the gate, where the only person he met was his own Gomasta who informed him that there was a dacoity in the village and that the dacoits had already left. He also said that he could not surmise the direction in which they had left. He denies that he was at any time requested by any choukidar for assistance. He has repeated his denial in the petition here, but there is no affidavit in opposition by any of the Chowkidars..

4. On 1-4-1955 the District Magistrate, Hooghly passed the following order:

"Whereas it has been made to appear to me that Sri Jafrul Islam son of late Syed Majidlal Islam of Basubati P.S. Singoor, holder of Licence No. 81/66 (P.S. Singoor) for one S.B.B.L. Gun No 27323 by Jefery & Co. and holder of licence No. 211 of P.S. Singoor for one .32 Bore Revolver No. A63460 by Webley & Scott and Sri Md. Easin, son of late Allarakha of Basubati P.S. Singoor holder of licence No. 175 of P.S. Singoor for one D.B.B.L. Gun No. 6789 by Manton Co., did not turn up and made no attempt to resist the dacoits who raided the house of Sri Ashutosh Pal of the same village on 13-7-54.

Now, therefore, in exercise of the power conferred by Section 18, Indian Arms Act (Act No. 11 of 1878) on a consideration of the facts and circumstances of the incident, I hereby order that their fire-arms licences be cancelled for the negligence noted above."

5. From this an appeal was taken by the petitioner to the Commissioner, Burdwan Division, who held that the appellant's failure to render any assistance in the matter though he possessed two fire-arms, was altogether unpardonable. The Commissioner proceeded to say that as the appellant had shown total absence of courage, it was quite clear that it was not safe in the cause of security of public peace to leave the licence with him. He dismissed the appeal.

6. This Rule was issued on 12-7-1955, calling upon the opposite parties to show cause why a writ in the nature of mandamus should not issue directing them to cancel/or revoke the orders complained of in the petition and/or forbear from giving effect to the same, and for other reliefs.

7. In my opinion, the order made by the learned Magistrate and upheld by the Commissioner, is entirely erroneous and must be set aside. I have explained the scope of Section 18, Arms Act, in several decisions, viz., Kshirode Chandra Pal Vs. District Magistrate, Howrah and Another, (A); Samarendra Nath Roy Vs. R.N. Basu, (B) . I have pointed out that the officer or the authority cancelling the licence must have reasons which he deems necessary for the security of public peace to cancel the licence. One might have strong views on the question of a person holding a licence for a Gun, being of a cowardly temperament, but that has got nothing to do with the cancellation of the licence for the security of public peace. What Section 18 means by these words is that the officer or the authority must consider that the person who holds the licence was likely to use the fire-

arm in a way, which would endanger the security of public peace. This result cannot be achieved in a roundabout manner by considering that if the man was brave or courageous, and used his fire-arms, it might have assisted in keeping the public peace. That is an irrelevant consideration. The learned Government Pleader points out that u/s 42, Criminal P. C., every person was bound to assist a police officer, reasonably demanding the aid, in the preventing of escape of persons, whom the police officer is authorised to arrest in the prevention or suppression of a breach of peace. Whether the matter comes u/s 42, Criminal P. C. or not, is for the purposes of this application, quite irrelevant. The petitioner denies that he was asked for assistance by the Choukidars. Even if the Chowkidars did ask for such aid, the petitioner may be guilty of contravention of Section 42, Criminal P. C. and liable for punishment provided therein. That, however, has got nothing to do with Section 18, Arms Act. The point is covered by the decision of a Division Bench of the Patna High Court, which is practically on all fours, " Sudhansu Kanta Acharyya Vs. State of Bihar and Others, (C). There, a dacoity was committed in a house on the Kanke Road, Ranchi, which was very close to the residence of the petitioner -- Sudhangsu Kanta Acharyya, who had at the time 11 fire-arms. The Deputy Commissioner, Ranchi, served a similar notice complaining of the inactivity of the petitioner at the time of dacoity. The Deputy Commissioner purported to cancel the licence, but this order was set aside by the Patna High Court, which held that the provisions of Section 18, Arms Act had not been complied with. The learned Judges stated as follows:

"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 the 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 relevancy on the question of 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."

8. I respectfully agree with the reasoning of this decision. In my opinion, the provisions of Section 18 have not been complied with, and the order of

cancellation is without jurisdiction and void.

9. For the reasons aforesaid, this Rule must be made absolute and the order of the Magistrate, dated 1-4-1955 and the order of the Commissioner in Appeal, dated 9-6-1955, must be quashed by a writ in the nature of certiorari, and there will also be a writ in the nature of mandamus, directing them not to give effect to the said orders. It follows, therefore, that the Gun and the Revolver and the respective licences, therefore, must be restored to the petitioner forthwith.

10. I do not, however, say anything about any future application made by the petitioner for renewal of his licences. They will be dealt with upon their own merits.

11. There will be no order as to costs.