

(2002) 07 MP CK 0085

In the Madhya Pradesh High Court

Case No : Writ Petition No. 267 of 2002

Vidhyaram

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Arms Act, 1959 — Section 21(3)

Citation : (2002) 4 MPHT 336 : (2003) 1 MPJR 80 : (2002) 4 MPLJ 532 : (2003) 1 RCR(Criminal) 209

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : P.C. Chandil, for the Appellant; J.D. Suryavanshi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

The petitioner by this petition has called in question the orders issued by the respondents vide Annexure P-3, dated 2-11-98, Annexure P-6, dated 20-11-2000 and Annexure P-7, dated 10-4-2001. The short facts giving rise to the present dispute is that the petitioner's father was holder of N.P. Bore Rifle No. 8536/1937 which was duly licenced by the competent authority. Because of a criminal case registered against the petitioner and his father, the said rifle was seized by the Police, Morena. The petitioner and his father were put to trial and the 3rd A.S.J., Morena vide order dated 2-4-92 (Annexure P-I) acquitted the petitioner. However, during the pendency of the trial, the father of the petitioner had expired. In the judgment the learned Court had ordered that on submitting a valid licence by the petitioner within three months the rifle in question shall be returned to him and further directed to send the same to the Collector in case the petitioner did not claim it within the stipulated time.

It is the case of the petitioner that after the death of his father he became the

lawful owner of the rifle and after renewal of the licence, which was done on 25-12-98 and is evident from Annexure P-2. He moved necessary application for release of the rifle. However by Annexure P-3 the 3rd A.S.J., Morena rejected the same without considering the submissions made by the petitioner. Thereafter a show-cause notice (Annexure P-4) was issued to the petitioner and in the said show-cause notice it was indicated that as to why action as per Section 21(3) of the Arms Act, 1959 be not initiated against him and the licence be confiscated and treated as property of the State.

The petitioner submitted his reply vide Annexure P-5. The same was rejected vide Annexure P-6, dated 20-11-2000 and thereafter the appeal filed has also been rejected. Learned Counsel for the petitioner submits that the delay in asking for release of the rifle is because the licence itself was renewed on 25-12-98. That apart, it is submitted by him that his application for release of the same was arbitrarily rejected without consideration vide Annexure P-3 and thereafter the show-cause notice and proceedings taken for confiscation of the same u/s 21(3) is not warranted and the said provisions are not applicable. It is his case that in the facts and circumstances, the respondents should have directed for return of the rifle to him as there is no case made out for confiscation of the same and there is no allegation of breach of peace, danger to public security or violation of the terms and conditions of the licence against the petitioner.

Respondents have filed their reply and their only contention that as the learned Additional District and Sessions Judge had directed for sending the rifle to the District Magistrate in case the petitioner does not claim it within the stipulated period.

I have heard learned Counsel for the parties.

The direction of the Sessions Judge was only to the effect that in case the petitioner does not appear for reclaiming the rifle within a period of three months, the same be sent to the District Magistrate. The only meaning of the aforesaid direction could be that the District Magistrate being the competent authority he should have dealt with the matter in accordance with law. There was nothing to indicate that the Sessions Court had prohibited from returning the rifle to the petitioner after the stipulated period.

The only reasonable interpretation that can be given to the order of the Sessions Judge is that the rifle was to be kept in the custody of the Court for a period of three months and thereafter it was to be sent to the District Magistrate for dealing with the same in accordance with the law. That being so, the interpretation and the consequential action on the part of the respondents to the effect that if the period of three months are over, the proceedings for confiscation of the licence is to be taken is totally misconceived and unsustainable.

The question now is as to whether the orders impugned Annexures P-6 and P-7 issued by the authorities are sustainable. A perusal of the aforesaid order

indicates that action has been taken in pursuance to Section 21(3) of the Arms Act. Section 21(3) of the Arms Act deals with matters pertaining to deposit of arms. Sub-section (3) provides that all things deposited and not received back within a particular period shall be forfeited to the Govt. by order of the Distt. Magistrate. The aforesaid provision can be enforced when a person is in possession of an arm or ammunition and which because of expiration of the licence or its suspension or revocation has been deposited with the competent authority. This is not a case where the arm was deposited in pursuance to Section 21(1) of the Act. Section 21(1) can only applied in cases where the arm is being deposited because of the eventualities mentioned therein. Present was not a case of the said nature.

On the contrary in the present case the direction was to return the rifle to the petitioner after the period of filing of appeal is over in case he produced a valid licence. However, the direction, that if he does not appear for three months the same be deposited with the Distt. Magistrate is being misconstrued and on the ground that the petitioner did not appear within three months action taken u/s 21(3) initiated was clearly unsustainable. As already indicated the provisions of Section 21(3) were not applicable in the facts and circumstances of the present case. That apart, the petitioner having given reasonable explanation and having produced renewed licence issued to him in December, 1998, the respondents ought to have dealt with the matter in a more reasonable manner instead of proceeding in such a manner wherein under total misapprehension of the legal provisions and without considering the fact that the property belongs to the petitioner has been confiscated, he has a legal right to retain the rifle and the said rifle can be taken away or he can be deprived from enjoying the same only in accordance with the procedure established under law. Considering the totality of the facts and circumstances of the case, the action of the respondents cannot be sustained and the orders impugned having been passed without application of mind contrary to the provisions of the Arms Acts cannot be sustained. Even under the provisions of the Arms Act, confiscation of an arm is permissible only in extreme cases where the person concerned mis-uses the licence granted to him and public interest and public safety is being violated. The present is not a case of such a nature on the contrary, the Sessions Court while acquitting the petitioner had directed for returning the rifle to him. This Court while considering cases of this nature has to apply the test of reasonableness, fairness and equality and viewed in the light of the aforesaid, the petitioner cannot be denied the right to use of his property in such a manner.

In view of the above, the impugned orders (Annexures P-6 and P-7) are quashed. The respondents are directed to return the property of the petitioner to him in case he has a proper valid licence for retaining the same

The petition is accordingly allowed.