

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 108 of 2024

Sunil Kumar Sinha Son of Late Shyam Bihari Lal Resident of Flat No. 105,
Keshav Place, Baily Road, Khajpura, Shashtrinagar, Rukanpura, Patna, Bihar-
800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home Department, Govt. of Bihar, Patna.
2. The Principal Secretary Home Department, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Koshi Division, Saharsa.
4. The District Magistrate, Supaul, Bihar.
5. The District Arms Magistrate, Supaul, Bihar.
6. The S.H.O., SC/ST Police Station, Sachiwalya, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Standing Counsel (12)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 08-10-2024

The present writ petition has been filed for quashing the order dated 07.06.2023, passed by the District Magistrate, Supaul, whereby and whereunder the arms license of the petitioner, bearing Arms License No.402 of 2019 has been cancelled and the petitioner has been asked to deposit his arms with the police station at Supaul. The petitioner has also prayed for quashing the order dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa in Arms



Appeal Case No.88 of 2023, whereby and whereunder the appeal filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner was granted arms licenses, bearing Arms License No.111 of 2003, Arms License No.145 of 2003 and Arms License No.146 of 2003 (one for Revolver, one for Rifle and one for Double Barrel Gun), by the District Magistrate, Supaul, in the year 2003 and therein the permanent address of the petitioner was shown as Flat No.105, Keshav Place, Shashtri Nagar, Baily Road, Patna and the current address was mentioned as C/o. Hemkant Jha, Ward No. 26, P.O and District- Supaul. The petitioner had got his Arms licenses renewed from time to time by paying the requisite fees and fulfilling all the requisite conditions, as provided under the Arms Act, 1959 and the Arms Rules, 2016. However, during the interregnum period, an FIR was lodged against the petitioner bearing Sachiwalaya P.S. Case No.75 of 2009, dated 16.06.2009, resulting in cancellation of the arms licenses of the petitioner on 22.09.2009, however, since the petitioner was acquitted in the said case, by a judgment dated 17.10.2017, the District Magistrate, Supaul by an order dated 28.01.2019, had again renewed the arms license of the petitioner, after due verification was conducted by the police officials regarding the residence of the petitioner situated at Supaul and



work/ business being carried out by him there. The petitioner had subsequently, in the year 2022, filed an application for transfer of arms licenses from District-Supaul to Patna district, before the District Magistrate, Patna, along with the requisite documents but instead of the license of the petitioner being transferred from Supaul to Patna, the petitioner was surprised to receive a show cause dated 13.04.2023, issued by the District Magistrate, Supaul, wherein the following charges were levelled and the petitioner was asked to submit his explanation to the same:-

i. Rent agreement or other documentary evidence has not been provided while obtaining the arms license in the District - Supaul.

ii. Evidence relating to work/business done by the petitioner in the district of Supaul has not been made available.

iii. Explanation is required to be furnished with regard to Sachiwalaya Patna P.S. Case No. 13 of 2023 dt. 16.02.2023.

iv. Even after expiry of the validity of Arms Licenses, the prescribed fee for renewal of the Arms Licenses and application forms have not been submitted.

V. According to Rule 17 and Rule 21 of the Arms Rule, 2016 if a person who holds a license in Form III, changes his place of residence, permanently, or temporarily for a period of more than six months, and carries with him the arms covered by the license, to a



place falling, other than within the jurisdiction of the existing licensing authority indicated in the license, he shall, immediately before the expiry of a period of six months, send intimation about such change to the licensing authority of the place of his new residence and shall on demand, forthwith produce the license and the arm or arms to the new licensing authority by applying in Form B-1, indicating there in the particulars of his new residence.

3. The petitioner had then submitted his reply on 12.05.2023, to the aforesaid show cause notice dated 13.04.2023, in the following terms:-

i. Charge No.1:- (Regarding non-submission of Rent agreement/ other documentary evidence, while obtaining arms license at Supaul):-

The issue with respect to the address of the petitioner in the District of Supaul has already stood settled. In fact the arms licenses of the petitioner was cancelled on 22.09.2009, on account of lodging of Sachiwalaya Patna P.S. Case No.75 of 2009, however, since the petitioner was acquitted in the said case, by a judgment dated 17.10.2017, the petitioner had approached the District Magistrate, Supaul. Thereafter, the District Magistrate, Supaul vide order contained in Memo No. 122-2 dt. 28.01.2019 had restored/renewed the Arms licenses of the petitioner and had specifically



observed therein that the Superintendent of Police, Supaul vide Letter no. 2763 dt. 25.08.2018, had directed the Officer-in charge, Supaul Police Station to investigate the address and ownership of the house of the petitioner at Supaul, who during the course of enquiry had quizzed one person namely Hemkant Jha, who told that he knows the petitioner very well and the petitioner lives temporarily in his house and an affidavit to the said effect was also submitted. Further, in the same order dt. 28.01.2019, it is also mentioned that for issuance of Arms license in favor of the petitioner in the year 2013, his application was verified through the Superintendent of Police, and the Officer-in charge, Karjain had reported that the petitioner was living in the house of one Ramdeo Mehta, Mohalla- Karjain, P.S.- Karjain, who is a businessman and a social worker. Thus, the address of the petitioner has already stood verified twice, hence the aforesaid allegation levelled against the petitioner has got no substance.

ii. Charge No.2:- (The petitioner having not made available evidence relating to works/ business being carried out by him in the district of Supaul):-

In respect to this allegation, it has been submitted that in the aforesaid order of the District Magistrate, Supaul, contained in Memo



No.122-2 dt. 28.01.2019 itself, it has been specifically observed that the petitioner was residing in Supaul due to his business related work. The Arms Act or Rules, do not contain any provision, which requires the licensee to provide details about his/her employment or work status, after issuance of the license and moreover, the licenses had originally been issued to the petitioner, only after due verification of all the above facts. Thus the aforesaid allegation levelled against the petitioner has got no substance.

iii. Charge No.3:- (Explanation regarding Sachiwalaya Patna P.S. Case No. 13 of 2023):-

In this regard, it has been submitted that in the aforesaid Sachiwalaya Patna (SC/ST) P.S. Case No. 13 of 2023 dt. 16.03.2023, registered for the offences under Sections 386, 387, 389, 406, 420, 500, 504, 506, 34 and 120 (B) of the Indian Penal Code and Section 3 (i) (r) (s) (p) / 3(ii) (b) of the SC/ST, Act, charge sheet has not yet been submitted against the petitioner and in fact no allegation has been levelled regarding misuse of arms by the petitioner. There is no provision under the Arms Act or Rules, which provides for cancellation of the license of a licensee in case of registration of an FIR. Moreover, mere pendency of an FIR cannot be a ground for cancellation / revocation of License



under the Arms Act or Rules. Therefore, the allegation is not sustainable in the eyes of law.

iv. Charge No.4:- (Non-submission of the prescribed fee for renewal of Arms License as also the application form, after expiry of the validity period of the Arms License):-

In this regard, it has been submitted that the petitioner, in the year, 2022 had applied for transfer of his Arms license from Supaul to Patna and while the same was pending, the license of the petitioner had expired on 31.12.2022, whereafter, the impugned order, cancelling the license, has been passed on 07.06.2023. Thus, the issue of renewal of arms license is mere technical in nature and the petitioner is ready to deposit the fees and the related application forms, once the impugned orders are set aside. Therefore, the aforesaid allegation cannot be a ground for passing the impugned order of cancellation of license dated 07.06.2023.

v. Charge No.5 (Rule 17 and Rule 21 of the Arms Rules, 2016):-

In this regard, it has been submitted that the petitioner had already filed an application for transfer of his arms licenses from the District of Supaul to Patna, in the year 2022, before the District Magistrate, Patna and instead of allowing transfer of arms licenses to Patna, the



impugned order, cancelling the Arms license, has been passed on 07.06.2023. It has been pointed out that the District License Officer, Supaul, vide letter dated 19.11.2022, had given his no objection with regard to renewal of the petitioner's Arms License in Patna District, however, subsequently vide letter dated 13.04.2023, the earlier NOC granted by the District License Officer, Supaul has been recalled on the ground of subsequent registration of FIR against the petitioner and for the reason that the petitioner has not applied for renewal and has not paid the renewal fees. It is contended that subsequent registration of FIR and pendency of same, ipso facto cannot be a basis for taking the aforesaid stand and the petitioner would have definitely deposited the renewal fees along with the application form subsequently, since he had already applied for transfer of the same to Patna District."

4. The learned Counsel for the petitioner has submitted that the District Magistrate, Supaul, without considering the reply of the petitioner, has cancelled the arms license of the petitioner, bearing arms licenses No.402/2019, by an order dated 07.06.2023, whereafter the petitioner had deposited his arms with the Sadar Police Station, Supaul on 17.6.2023. The petitioner had then filed an appeal before the Divisional Commissioner, Koshi



Division, Saharsa against the aforesaid order dated 07.06.2023, which was registered as Arms Appeal Case No.88 of 2023, however, the Divisional Commissioner, Koshi Division, Saharsa has rejected the same, by the impugned order dated 29.11.2023, without considering the averments made by the petitioner in his memo of appeal and in a mechanical manner.

5. At this juncture, the learned counsel for the petitioner has referred to Rule 17 of the Arms Rule, 2016, which is reproduced herein below:-

“17. Registration of licence with an outside licensing authority and change of address with existing licensing authority.-(1) If a person who holds a licence in Form III changes his place of residence, permanently, or temporarily for a period of more than six months, and carries with him the arms covered by the licence, to a place falling, other than within the jurisdiction of the existing licensing authority indicated in the licence, he shall, immediately before the expiry of a period of six months, send intimation about such change to the licensing authority of the place of his new residence and shall on demand, forthwith produce the licence and the arm or arms to the new licensing authority by applying in Form B-1 and indicating there in the particulars of his new residence.

(2) The licensing authority of the new place of



residence of the licensee on receiving an application in Form B-1 under sub-rule (1), shall within a period of fifteen days, register the licensee in the NDAL system whereby the UIN of the licensee shall stand activated and transferred to its jurisdiction and de-activated from the records of the original licensing authority or the last renewing authority as the case may be and thereupon a new licence book shall be issued to the licensee and such new authority shall be the licensing or the renewing authority in relation to the said licence.

(3) Where the licensee changes his permanent place of residence within the jurisdiction of the existing licensing authority, he shall forthwith inform the same to the licensing authority with the proof of his new place of residence and if such change has resulted in change of jurisdiction of police station, along with information of the police station of his new place of residence and the licensing authority shall within a period of fifteen days, register the change of residence of the licensee in the NDAL system whereby the UIN of the licensee shall stand activated under the new police station and de-activated from that of the last police station.”

6. The learned counsel for the petitioner has submitted that the impugned order dated 07.06.2023, passed by the District Magistrate, Supaul is perverse inasmuch as the District Magistrate, Supaul has failed to consider that charges no.1 and 2



are unfounded, frivolous and do not merit any consideration, inasmuch as, the District Magistrate, Supaul, vide order contained in Memo No. 122-2 dt. 28.01.2019 had restored/renewed the Arms license of the petitioner, after due verification and after having found that the business/work and residence of the petitioner was situated at Supaul itself. It is stated that thereafter, Covid-19 pandemic had arrived, leading to closure of the work/business of the petitioner at Supaul, hence the petitioner had applied for transfer of the arms license from Supaul to Patna, in the year 2022, by filing an application before the District Magistrate, Patna. As regards charge No.3, pertaining to pendency of a criminal case bearing Sachiwalaya Patna (SC/ST) P.S. Case No.13 of 2023 dated 16.03.2023, it is submitted that the said case was instituted against the petitioner only as a counter blast to one another FIR bearing Rupaspura P.S. Case No.18 of 2023, dated 09.01.2023, wherein the petitioner is a witness and has deposed against the informant of the said Sachiwalaya Patna P.S. Case No.13 of 2023. It is pointed out that as far as the said Sachiwalaya Patna (SC/ST) P.S. Case No.13 of 2023 is concerned, neither chargesheet has been filed nor cognizance has been taken by the Ld. Trial Court, hence mere institution of an FIR cannot be a ground for cancellation of the Arms license under Rule 17 of the Arms Rule, 2016. In this



connection, reliance has been placed upon a judgment, rendered by the Hon'ble Patna High Court, in the case of ***Harinandan Singh Vs. The State of Bihar***, reported in ***2018 SCC Online Patna 959***, as also the one rendered in the case of ***Raj Kumar Yadav Vs. The State of Bihar***, reported in ***(2019) 4 PLJR 977***, apart from the one rendered by this Court, in the case of ***Mewa Lal Choudhary Vs. The Union of India***, reported in ***(2019) 4 PLJR 600***. It would be relevant to reproduce paragraphs no.9 to 12 of the judgment rendered in the case of ***Mewa Lal Choudhary*** (supra), herein below:-

“9. This Court further finds that neither charge sheet has been filed by the police in the pending criminal case i.e. Sabour P.S. Case No. 35 of 2017 nor the learned trial court has taken cognizance of the offence, as has been clearly averred by the petitioner herein, which stands un-rebutted by the respondents and, in fact, upon an query having been put by this Court to the learned counsel for the respondents regarding the said issue, the learned counsel appearing for the respondents could not deny the fact that neither the charge sheet has been filed nor the learned trial court has taken cognizance of the offence in the aforesaid pending criminal case bearing Sabour P.S. Case No. 35 of 2017. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of S.R. Sukumar v. S. Sunaad



Raghuram, reported in (2015) 9 SCC 609, wherein the Hon'ble Apex Court has held that taking cognizance of an offence by a Magistrate has a reference to the application of judicial mind by a Magistrate in connection with the commission of an offence and only after cognizance of an offence has been taken by the Magistrate, it can be said that judicial notice of an offence has been taken by a Magistrate and the learned Magistrate has decided to proceed against the person accused of having committed that offence, as alleged.

10. The learned counsel for the petitioner has further referred to a judgment reported in (2012) 3 SCC 64 [Subramanian Swamy v. Manmohan Singh], paras No. 34 and 43 whereof are reproduced herein below:-

"34. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term "cognizance" has not been defined either In the 1988 Act or CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing Jurisdiction, on a cause or matter presented before it so as to decide whether there is



any basis for initiating proceedings and determination of the cause or matter judicially".

43. Before proceeding further, we would like to add that at the time of taking cognizance of the offence, the court is required to consider the averments made in the complaint or the charge-sheet filed under Section 173. It is not open for the court to analyse the evidence produced at that stage and come to the conclusion that no prima facie case is made out for proceeding further in the matter. However, before issuing the process, it is open to the court to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out. On finding that such an offence has been made out the court may direct the issue of process to the respondent and take further steps in the matter. If it is a charge-sheet filed under Section 173 CrPC, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court. Thus, it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether or not an offence has been made out".

11. In this regard, this Court would further like to place reliance upon the judgments rendered by the Hon'ble Apex Court in various cases, which are



elaborated herein below:-

(i) (1976) 3 SCC 252 [Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy].

(ii) (2000) 7 SCC 183 [Narsingh Das Tapadia v. Goverdhan Das Partani]

(iii) (2005) 7 SCC 467 [CREF Finance Ltd. v. Shree Shanthi Homes].

(iv) (2012) 6 SCC 228 [General Officer Commanding Rashtriya Rifles v. CBI. As far as this judgment is concerned, it would be apt to reproduce herein below paragraph No. 63:-

"63. In broad and literal sense 'cognizance' means taking notice of an offence as required under Section 190 Cr.P.C. 'Cognizance' indicates the point when the court first takes Judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV of the Cr.P.C. (Vide R.R. Charl v. The State of Uttar Pradesh and State of W.B. v. Mohd. Khalid.)"

12. Having regard to the law laid down by the Hon'ble Apex Court in a catena of judgments, as aforesaid, this Court is of the view that since neither the charge sheet has been filed by the police nor cognizance of the offence has been taken by the learned Magistrate in the aforesaid pending Sabour P.S. Case No. 35 of



2017, it cannot be said that a criminal case is pending as against the petitioner herein so as to warrant impounding of the passport of the petitioner under Section 10 (3)(e) of the Passport Act, 1967, hence on this ground as well, the impugned order dated 24.10.2017 is liable to be quashed and is accordingly set aside.”

7. It is next contended by the learned counsel for the petitioner that the other allegation levelled against the petitioner is with regard to the petitioner having not deposited fee for renewal of the arms license even after expiry of the validity period of the arms license, a charge which is not only trivial in nature but hyper technical as well, in view of the fact that much before the expiry of the validity period of the arms license of the petitioner, i.e. 31.12.2022, the petitioner had already filed an application before the District Magistrate, Patna, for transfer of the Arms license from Supaul to Patna, nonetheless, the District Magistrate, Supaul had issued a show cause notice dt. 13.04.2023, whereafter the license of the petitioner has been cancelled on 07.06.2023, hence no occasion had arisen for filing the prescribed fees for renewable of the license, nonetheless, the petitioner is ready to deposit the fees for the purposes of renewal of his Arms license.

8. It is next contented by the learned counsel for the



petitioner that as far as the last charge regarding violation of Rule 17 of the Arms Rules, 2016, is concerned, the same is not attracted in the present case, inasmuch as the arms license granted to the petitioner is valid throughout the State of Bihar and not limited to any particular district. Nonetheless, it is submitted that during the Covid-19 pandemic period, the work of the petitioner at Supaul was discontinued, hence in the year 2022 itself, the petitioner had filed an application, before the District Magistrate, Patna, for transfer of his Arms licenses from Supaul to Patna, hence the petitioner had definitely informed the licensing authority about his new place of residence, thus there is no violation of Rule 17 of the Arms Rules, 2016.

9. At this juncture, the learned counsel for the petitioner has submitted that providing temporary address cannot be a ground for cancellation of arms license. In this connection, reliance has been placed on a judgment, rendered by a co-ordinate Bench of this Court in the case of ***Hariom Kumar Vs. The State of Bihar and Ors.***, reported in ***2018 SCC Online Patna 962***. It is also submitted that arms license can only be cancelled in case the licensee has contravened any terms and conditions of the arms licenses and not on any other ground. In this connection reliance has been placed on a judgment rendered by a learned Division



Bench of this Court in the case of ***Madhup Kumar Singh Vs. The State of Bihar and Ors.***, reported in ***2016 SCC Online Pat 1414***, paragraphs no.4 to 6 whereof, are reproduced herein below:-

“4. The main ground for cancellation of the arms licence was that on subsequent verification, allegedly, the petitioner/appellant was not found to be residing at the Saharsa address and as such he had earlier wrongly obtained the arms licence.

5. Having considered the matter, in our view, there had been no wrongful disclosure at the time when the arms licence application was filed. The arms licence (Annexure- 1) itself shows a clear mention of his permanent address of Sitamarhi and present address of Saharsa. There is no allegation that any of the terms and conditions of the licence, so granted, had been violated. We are of the considered view that, in view of the aforesaid two facts, there was no occasion for the authorities to cancel the arms licence once it was so granted. Granting of arms licence is in exercise of statutory powers under the Arms Act. It is for the authorities to consider the grant or not to grant the licence. The petitioner/appellant had made a disclosure about his permanent address and his present address, the arms licence was granted. It is only, subsequently, when he wanted the said licence to be endorsed, as being now permanent resident of Sitamarhi, deleting his temporary address, this



enquiry and action was taken to cancel the arms licence. Cancellation of arms licence, already granted, can only be made on the ground if under the Arms Act, undisputedly it is not mentioned, the petitioner/ appellant had contravened any terms and conditions of the grant of arms licence. In our considered view, a licence so granted could not be cancelled.

6. Thus, the order dated 25.06.2005 of the District Magistrate, Saharsa, the appellate order dated 11.02.2006 of the Divisional Commissioner, Koshi Division, Saharsa and the order dated 30.07.2012 passed in C.W.J.C. 7280 of 2006 by the learned Single Judge cannot be sustained. They are, accordingly, set aside. This appeal is allowed.”

10. Last but not the least, it has been submitted by the learned counsel for the petitioner that the Arms license of the petitioner was valid upto 31.12.2022, however the order, cancelling the Arms license of the petitioner, has been passed only on 07.06.2023. It is stated that it is necessary that a valid Arms license exists, before any order, cancelling an Arms license, is passed. In the present case, license had already stood expired much before the day, the license was cancelled i.e. 07.06.2023, hence the Order dated 07.06.2023, passed by the District Magistrate, Supaul, would be deemed to be rejection of the application filed by the petitioner for transfer/renewal of his Arms license. The learned Counsel for the petitioner, at this



juncture has pointed out that before passing of the impugned order dated 07.06.2023, by the District Magistrate, Supaul, the District Arms Magistrate, Supaul had submitted a report dated 19.11.2022, wherein it has been stated that the arms license of the petitioner has been issued for the entire State of Bihar and he has got no objection in case the Arms license of the petitioner is transferred/renewed in the Patna district, however, the same was ignored and subsequently a letter dated 13.04.2023 was written by the District Magistrate, Supaul to the District Magistrate, Patna, stating therein that the arms license of the petitioner has expired on 31.12.2022 and one Sachiwalaya Patna (SC/ST) Case No.13 of 2023 has been registered, in which the petitioner is an accused. In fact, the impugned order dated 29.11.2023, has been passed by the Divisional Commissioner, Koshi Division, Saharsa, without taking into consideration the police report submitted by the Sub-Inspector of Police, Shastri Nagar Police Station dt. 28.08.2023, wherein it has been categorically stated that there is a serious threat to the life of the petitioner and no complain has ever been made against the petitioner regarding misuse of his arms.

11. *Per contra*, the learned counsel for the respondent-State has submitted that the petitioner has obtained arms licenses in his



name by furnishing fictitious address of Supaul as his present address by furnishing false and fabricated documents in proof of his address, which have been found to be false upon verification. Moreover, the petitioner is having several criminal antecedents as also he is involved in criminal activities. It is also submitted that show cause was issued to the petitioner by the District Magistrate, Supaul, whereafter the petitioner had submitted his reply to the same and only then by a reasoned and a speaking order dated 07.06.2023, passed by the District Magistrate, Supaul, the arms license of the petitioner has been cancelled, hence there is no illegality in the same. In fact, the appellate order dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa also does not suffer from any illegality. It is next submitted that verification of the residential status of the petitioner was conducted by the Sub-Divisional Officer, Supaul and only then the aforesaid show cause notice dated 13.04.2023 was issued, inter alia levelling five charges upon the petitioner, as aforesaid, to which the petitioner has not furnished any satisfactory reply, hence it is submitted that there is no merit in the present writ petition and the same is fit to be dismissed.

12. The learned counsel for the respondent-State has contended that upon verification, it has been found that the petitioner had



left the house at Supaul, about 3 to 4 years back, however, he had failed to inform the licensing authority about the same, hence the same amounts to violation of Rule 17 of the Arms Rule, 2016. It is stated that a criminal case, bearing Sachiwalaya Patna (SC/ST) Case No.13 of 2023, has been registered against the petitioner, hence the petitioner is not liable to possess/retain arms license.

13. The learned counsel for the respondents has also referred to pendency of some other criminal cases qua the petitioner, however, he has fairly submitted that the same neither forms part of the charges levelled against the petitioner, in the show cause notice dated 13.04.2023, nor forms part of the impugned orders dated 07.06.2023 and 29.11.2023, hence the said issue is not being pressed in the present case. In response, the learned Counsel for the petitioner has submitted that by way of counter affidavit, no new grounds can be developed nor the impugned orders can be improved. In this connection, reference has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *Bhikhu Bhai Bhithla Bhai Patel Vs. The State of Gujarat and Ors.*, reported in (2008) 4 SCC 144. Nonetheless, the learned counsel for the petitioner has submitted that the said aspect of the matter has been clarified in paragraph no.22 of the rejoinder affidavit and in fact none of the said cases can be said



to be pending qua the petitioner herein in legal parlance and as far as Kotwali P.S. Case No.557 of 2016 is concerned, the petitioner has already been acquitted, by an order dt. 15.06.2017, passed by the Ld. Court of Chief Judicial Magistrate, Patna.

14. I have heard the learned counsel for the parties and perused the materials on record. The facts leading to the present case lie in a narrow compass inasmuch as the petitioner was granted arms licenses long back in the year 2003, which was cancelled on 22.09.2009, on account of lodging of Sachiwalaya P.S. Case No.75 of 2009, however, after the petitioner was acquitted in the said case by a judgment dated 17.10.2017, the District Magistrate, Supaul had revived/renewed the arms license of the petitioner by an order dated 28.01.2019, whereafter the petitioner had applied for transfer of his arms license from supaul to Patna, by filing an application, before the District Magistrate, Patna, in the year 2022, since his work/business at Supaul had been discontinued on account of Covid-19 pandemic. It appears that a verification report was called for by the District Magistrate, Patna, leading to the District Arms Magistrate, Supaul, having written to the District Arms Magistrate, Patna, vide letter dated 19.11.2022, granting no objection (NOC) to renewal of the arms license of the petitioner at Patna District,



however, the said 'NOC' was recalled by the District Magistrate, Supaul, vide letter dated 13.04.2023, on the ground that the petitioner had not deposited the renewal fees, inasmuch as his arms license had expired on 31.12.2022 and further on account of the petitioner having been made an accused in one Sachiwalya Patna (SC/ST) Case No.13 of 2023.

15. The District Magistrate, Supaul had then issued a show cause notice dated 13.04.2023 to the petitioner, inter alia levelling therein five charges, to which the petitioner had filed his reply on 12.05.2023 and then the District Magistrate, Supaul had passed the impugned order dated 07.06.2023, cancelling the arms license of the petitioner, which was challenged by the petitioner by filing an appeal bearing Arms Appeal Case No. 88 of 2023, however, the same has also stood rejected by an order dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa.

16. The issues which arise for consideration in the present case are as follows:-

Issue No. 1:- Whether documentary evidence/rent agreement was provided by the petitioner while obtaining the arms licenses in the District of Supaul?

Issue No. 2:- Whether evidence regarding work/business being carried out by the petitioner was made



available to the licensing authority while obtaining arms licenses in the District-Supaul?

Issue No. 3:- *Whether registration of Sachivalya Patna (SC/ST) P.S. Case No.13 of 2023, against the petitioner, would entail cancellation of his Arms license?*

Issue No. 4:- *Whether non-payment of the prescribed fees for renewal of arms license would warrant cancellation of the Arms license of the petitioner?*

Issue No. 5:- *Whether Rule 17 of the Arms Rules, 2016 has been violated by the petitioner?*

17. As far as issues No. 1 and no. 2 are concerned, this Court is of the view that the same cannot be raised at this juncture, since the District Magistrate, Supaul, while restoring/renewing the license of the petitioner by an order dated 28.01.2019, had specifically observed therein that the Superintendent of Police, Supaul vide Letter no. 2763 dt. 25.08.2018, had directed the Officer-in charge, Supaul Police Station to investigate the address and ownership of the house of the petitioner at Supaul, who during the course of enquiry had quizzed one person namely Hemkant Jha, who told that he knows the petitioner very well and the petitioner lives temporarily in his house and an affidavit to the said effect was also submitted. Further, in the same order dt. 28.01.2019, it has also been mentioned that for issuance of Arms license in favor of the petitioner in the year 2013, his



application was verified through the Superintendent of Police, and the Officer-in charge, Karjain had reported that the petitioner was living in the house of one Ramdeo Mehta, Mohalla- Karjain, P.S.- Karjain, who is a businessman and a social worker. The police had also reported that there is no complaint against the petitioner, thus, it is clear that the police had duly verified the fact that the petitioner was staying on a temporary basis on rent, in the premises of one Hemant Jha, who had also given affidavit to the said effect. The police official had also verified that the petitioner was staying in the district of Supaul at Karjain Bazar and for his business purpose he was staying in the house of one Hemant Jha on a temporary basis, apart from the fact that his permanent place of address had also been verified and certified by the Senior Superintendent of Police, Patna, which was found to be correct. In such view of the matter, the arms license of the petitioner was restored/renewed by the District Magistrate, Supaul by an order dated 28.01.2019 in the following terms:-

“आवेदक के विरुद्ध जिस आरोप में अनुज्ञप्ति निलंबित / रद्द की गई थी वह आरोप न्यायालय द्वारा प्रमाणित नहीं हुआ एवं आवेदक न्यायालय से बरी हो चुके हैं। निवास का सत्यापन भी पुलिस अधीक्षक, सुपौल एवं वरीय पुलिस अधीक्षक, पटना द्वारा किया गया एवं सही पाया गया। शस्त्र नियमावली, 2016 के नियम-11 में वर्णित प्रावधान के अन्तर्गत आवेदक सुपौल जिला क्षेत्र अन्तर्गत अपने



व्यवसाय के लिए अस्थायी रूप से निवास करते हैं। अतः उक्त के आलोक में श्री सिन्हा के शस्त्र अनुज्ञप्ति संख्या- 145/2003 एवं 146/2003 को तत्कालिक प्रभाव से पुनर्जिवित किया जाता है। थानाध्यक्ष, सुपौल को निदेश है कि आवेदक श्री सिन्हा के उक्त अनुज्ञप्ति पर धारित शस्त्रों को पुलिस अभिरक्षा से मुक्त करेंगे। लेखापित एवं संशोधित।”

Thus, the address of the petitioner and the factum regarding him carrying business at Supaul has already stood verified twice, hence the aforesaid charges levelled against the petitioner has got no substance, thus, Issue No. 1 and No. 2 are decided in favor of the petitioner and against the respondents and it is held that the same are not valid and legal grounds, so as to warrant cancellation of the Arms license of the petitioner.

18. As far as Issue No. 3, i.e regarding pendency of Sachiwalaya Patna (SC/ST) P.S. Case No.13 of 2023, is concerned, neither chargesheet has been filed by the police nor cognizance has been taken by the learned Trial Court, hence this Court finds that the same would not be a disqualification for the purposes of holding an Arms license, in view of the well settled law that in case neither the chargesheet has been filed by the police nor cognizance of the offences has been taken by the learned Magistrate, it cannot be said that judicial notice of an offence has been taken by a Magistrate and the learned



Magistrate has decided to proceed against the person accused of having committed that offence, as alleged, hence, it cannot be said that a criminal case is pending as against the petitioner. Reference in this connection be had to a judgment rendered by this Court in the case of *Mewa Lal Choudhary* (supra). Thus, Issue No. 3 is decided in favor of the petitioner and against the respondents and it is held that mere pendency of the aforesaid criminal case, against the petitioner, would not entail cancellation of the Arms license of the petitioner.

19. Now, coming to Issue No. 4, regarding non-payment of the prescribed fees for renewal of arms licenses, this Court finds the said charge to be hyper technical, inasmuch as before the expiry of the validity period of the arms license of the petitioner, i.e. 31.12.2022, the petitioner had already filed an application before the District Magistrate, Patna, for transfer of the Arms license from Supaul to Patna, nonetheless, the District Magistrate, Supaul had issued a show cause notice dt. 13.04.2023, whereafter the license of the petitioner was cancelled on 07.06.2023, hence no occasion had arisen for filing the prescribed fees for renewable of the license, nonetheless, this Court finds that the petitioner is ready to deposit the prescribed fees for renewal of his Arms license. Thus, Issue No. 4 is decided in favor of the



petitioner and against the respondents.

20. As regards Issue No. 5, i.e whether the petitioner has violated Rule 17 of the Arms Rules, 2016, it would suffice to state that the said provision of law is not attracted in the present case, inasmuch as the arms license, granted to the petitioner, is valid for the entire State of Bihar and not limited to any particular District. This Court further finds that during the Covid-19 pandemic period, the work of the petitioner at Supaul was discontinued, hence in the year 2022 itself, the petitioner had filed an application, before the District Magistrate, Patna, for transfer of his Arms licenses from Supaul to Patna, thus the petitioner had definitely informed the licensing authority about his new place of residence, therefore, I find that Rule 17 of the Arms Rules, 2016, has not been violated by the petitioner. Accordingly, Issue No. 5 is decided in favor of the petitioner and against the respondents.

21. Thus, considering in totality, the aforesaid facts and circumstances of the case, including the materials available on record as also taking note of the averments put forth by the parties, this Court finds that Arms license, already granted, can be cancelled only if the licensee contravenes any terms and conditions of the grant of arms license, however, in the present



case neither the impugned order dated 07.06.2023, passed by the District Magistrate, Supaul nor the appellate order dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa, mentions about the petitioner having contravened any of the terms and conditions of the grant of Arms license, hence on this ground alone the impugned orders dated 07.06.2023 and 29.11.2023 are fit to be quashed. This aspect of the matter stands squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of ***Madhup Kumar Singh*** (supra). As far as the charges levelled against the petitioner, vide show cause notice dated 13.04.2023, which forms the basis for passing the aforesaid impugned orders dated 07.06.2023 and 29.11.2023, are concerned, the same have been found by this Court to be without any substance, as can be culled out from the discussion made by this Court in the preceding paragraphs, hence, even on merits, the order dated 07.06.2023, passed by the District Magistrate, Supaul and the appellate order dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa in Arms Appeal Case No. 88 of 2023 are not sustainable in the eyes of law, hence are liable to be quashed.

22. Having regard to the facts and circumstances of the case and for the foregoing reasons, the impugned orders dated



07.06.2023, passed by the District Magistrate, Supaul and the one dated 29.11.2023, passed by the Divisional Commissioner, Koshi Division, Saharsa are set aside.

23. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	22.07.2024
Uploading Date	08.10.2024
Transmission Date	N/A

