

In The Court of Commissioner, Saran Division, Chapra
Arms Appeal No. 94/2018
Raghwendra Singh
Vrs.
The State of Bihar
ORDER

The instant appeal application is directed against the impugned order passed by D.M. Saran, dt. 13.03.2018 whereby and whereunder the Arms licence No. 97/2004 for .315 Bore Rifle standing in the name of the appellant has been cancelled with immediate effect.

The brief facts of the case are that one Raghwendra Singh S/o Kamlapati Singh, R/o Vill-Kothayan, P.S.-Jalalpur, Dist-Saran was holding an arms licence No. 97/2004 for 315 Bore Rifle. Further case is that the S.P. Saran vide letter No. 4083/confi. dt. 03.12.2009 sent a report that the allegation against the appellant was that in course of family dispute he attempted to kill Kamla Pati Singh and his wife and accordingly, the S.P. Saran recommended for the cancellation of arms licence of the appellant. Thereafter, the learned D.M. taking cognisance on the said report of S.P., the said licence was suspended vide order dt. 11.01.2010 and show cause from the appellant for the said allegation was sought. The appellant appeared before the learned D.M. and stated that there is a dispute in the family for partition of family property and it was only due to that complaint has been filed against him and the allegation like attempt of killing is totally wrong. Thereafter, the learned D.M. Saran finally vide order dt. 13.03.18 cancelled the said licence.

Feeling aggrieved by the said order, the petitioner has filed the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order, submitted that the same is illegal, arbitrary and against the relevant provision of the Arms Act. The learned counsel also argued that the case of the complainant is totally depends upon his malafide intention due to family dispute/victimization and appellant is highly educated, involved in social activities and having good land holding. He also submitted that due to the apprehension of security of life, the appellant applied for arms licence in the year 2002 and after through enquiry licence was granted by D.M. Saran vide Licence No. 97/04 dt. 20.08.2004. The mother of the appellant died in the year 1970 and after death of mother, father of appellant i.e. complainant namely Kamla Pati Singh solemnized second marriage in the year 1971. At instance of step mother and step brothers father of appellant filed a complaint before D.M. Saran alleging therein that appellant threatens to kill complainant. The complaint was inquired by the Dy. S.P. Special Branch, Chapra and on the basis of inquiry report, the D.M. Saran suspended arms licence of appellant vide memo No. 152 dt. 16.01.2010. The appellant appeared and filed show-cause in Arms case No. 01/2010 but vide order dt. 13.03.2018 the D.M. Saran cancelled arms licence without hearing the appellant and in most casual manner and without applying his judicial mind. The learned counsel also argued that the appellant humbly submits that the malafide from complaint and enquiry report can be judged from the fact that the complainant never instituted any F.I.R. in local police station against appellant for threatening to kill the complainant and not even a single F.I.R. was instituted against appellant either by complainant or by any other person. He further argued that the licencing authority

without giving any opportunity of hearing to the appellant, passed the impugned order only on the report of S.P. Saran thereby violating the principle of natural justice and fair play. He further argued that all the allegations of misuse of arms by the appellant are false. He also argued that the D.M. Saran has not exercised his jurisdiction in accordance with statutory provisions as also violation of the principles of natural justice and arms licence of the appellant was cancelled. That it does not appear from the material available on record that either from the complainant the D.M. Saran or the Dy. S.P. Special Branch, Chapra came to a conclusion that the appellant used his arms in the incident of firing or any one received any injury from the arms of the appellant and there is no material on record to suggest that the appellant ever misused the arms. The D.M. Saran has not exercised jurisdiction as incorporated/mandated under section 17(3) of the Arms Act 1959. The learned counsel lastly prayed that as the impugned order suffers from the vice of arbitrariness, the same is fit to be set aside.

The learned A.P.P. appearing on behalf of the state, vehemently opposed the arguments forwarded by the learned counsel for the appellant and said that the appellant misused his arms for threatening his parents and on that ground the cancellation of his arms licence is fully justified.

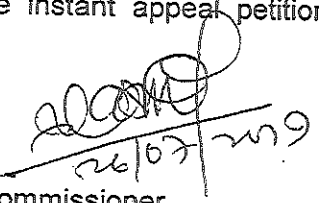
Considering the facts the circumstances of the case, material available on the records and on going through the respective submissions advanced by the learned counsel for the parties, it appears that the learned D.M. Saran has passed the impugned order only on the recommendation made by S.P. Saran wherein specific recommendation have been made for cancelling the arms licence held by the appellant. The learned counsel for the appellant has laid maximum stress on the point that the impugned order has been passed in utter violation of the provisions contained in Arms Act-1959 inasmuch as the appellant has not been afforded any opportunity of hearing by the licencing authority and even on the wrong report regarding misuse of arms by the appellant sent to the licencing authority by S.P. Saran. From the impugned order of learned D.M., it is seen that although, the appellant had filed haziri on the day of final hearing but he could not be heard due to his absence. Thus, it appears that the appellant has failed to argue his case. It is also seen that the learned D.M. relied heavily on the argument forwarded by the learned counsel for the private o.p. that the appellant used to make attempt to kill his mother and father. Obviously this allegation could not have been relied upon by the licencing authority unilaterally in as much as the said allegation could not have been controverted due to absence of the appellant. Moreover, it is a case in which the appellant has not been granted opportunity to defend his case properly and subsequently his arms cancellation order has been passed in back of the appellant and as such requirement of natural justice has not been fulfilled.

For the aforementioned reasons, the impugned order of D.M. Saran is not sustainable and hence the same is set aside. The case is remitted back to D.M. Saran to pass a fresh order after giving opportunity of hearing to the appellant.

With the aforesaid observations and directions the instant appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.