

In The Court of Commissioner, Saran Division, Chapra

Arms Appeal No. 185/2018

Arun Prakash

Vrs.

The State of Bihar

ORDER

26.07.2019.
The instant appeal is directed against the impugned order passed by District Magistrate, Saran on 28.08.2018 whereby and whereunder the appellant application for grant of Arms licence with respect to Revolver/Pistol has been rejected.

The brief facts of the case are that appellant Arun Prakash S/o Late Sriprakash Saraf, R/o Vill-Sahebganj Ajad Road, P.S.-Chapra Nagar, Dist-Saran filed an application before the licensing authority, D.M. Saran for grant of Arms license. Thereafter, a report was called for from S.P. Saran which was sent vide letter No. 4599/confi., dt.11.09.2017. Meanwhile during the pendency of the case of the appellant the, the appellant approached the Hon'ble High Court by filing CWJC No. 14871/2018 and the Hon'ble High Court was pleased to disposed of the said case vide order dt. 06.08.2018 in which specific direction was given to the D.M. Saran to take a final decision of the said case within 08 weeks from the date of receipt/production of a copy of this order. Then the learned D.M. finally heard the matter and rejected the said application of the appellant.

Feeling aggrieved by and dissatisfied with the aforementioned refusal order passed on 28.08.2018 the petitioner has preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant, at the very outset of his arguments, submitted that the impugned order is bad in law and the same is also not maintainable in the eyes of law. He further submitted that the appellant filed an application for the grant of the licence as it was necessitated in connection with his protection of life and property as well as the protection and safety for his family members. He also argued that it is relevant to mention here that after death of the father of the appellant, the elder brother namely Varun Prakesh is running a separate shop in the name and style of 'Sri Prakesh Ornament' situated in Azad road, Sahebganj, Chapra and the arms of the father of the appellant was transferred in the name of Varun Prakesh. Both brothers are running two separate shops and they have no connection with each other in any manner. This appellant started his separate shop in Hathua Market from May 2016 and in the need of safety as stated above had applied for the licence of arms on 30.06.2017. He further stated that the appellant and his family members are facing grave threat perception to their life and property. It is not out of place to mention here that in connection of his business the appellant is bound to visit with hard cash, gold, diamond and its ornament etc. from one place to another. Therefore, he is in dire necessity of an arms for protection of his life and valuable articles. That Accordingly, the District Magistrate, Saran called for the report from the competent authorities and after due inquiry and satisfaction the Circle Officer, S.H.O. of the concerned Police station reported all the relevant facts and the Superintendent of Police, Saran forwarded the same vide letter No. 4599/C dated 11.09.2017 to the licencing authority. Nothing adverse was reported against the appellant by the authorities. That still the appellant and his family members are in apprehension of mishappening, threats, perceiving grave and imminent threats from the anti social elements and criminals because the appellants an eminent businessman of Saran district and this fact are well within the knowledge of the general public and local administration. He also said that the appellant is law abiding citizen having no criminal antecedent and nothing adverse has been found by the competent police officer while inquiry was made. Thereafter, the appellant is entitled to get arms licence for which he had applied. For that the District Magistrate, Saran has erred while rejecting the application of the appellant, he ought to have considered the application of the appellant in the light of Rule-12(3)(a) of Chapter-III of the arms Rules-2016 and allowed the same. For that the District Magistrate, Saran ought to have considered that vide the several orders the Hon'ble Court, Patna decided/held that for granting arms licence it is not necessary to suffer or sustain actual assault, more

serious apprehension is enough for granting the same. He also submitted that neither the provisions contained in section-13 & 14 of the Act has not been complied with by the licencing authority while passing the impugned order and even the said order is also a non speaking order and he also referred to some reported judgements in support of his contention. The learned counsel further submitted while assailing the impugned order of D.M. Saran, that the learned D.M. wrongly held that the appellant does not have any threat to his life and property merely relying on the report of S.P. Saran. He also submitted that without making any assessment of the threat perception of the appellant the learned D.M. relying upon the report of the S.P. Saran rejected the application which is totally illegal, arbitrary and against the observations made by Hon'ble High Court in several cases. He lastly submitted that the impugned order of D.M. Saran is fit to be set aside.

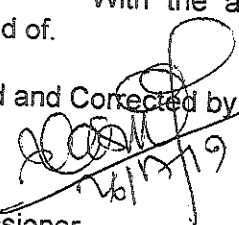
The learned A.P.P. appearing on behalf of the state, while opposing, the arguments advanced by the learned counsel for the appellant, submitted that assessment of threat perception by the licensing authority has been made an essential condition for consideration of grant of an arms license as per the detailed instruction contained in the letter No. 3026 dt. 13.04.2010 issued by the dept. of Home, Govt. of Bihar and also there is no specific report regarding any incident of threat of life and property to the appellant in the police report. As such the appellant does deserve to be considered for the grant of licence. He also submitted that the learned D.M. Saran has passed a reasoned and speaking order having no scope of interference.

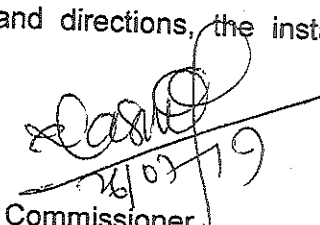
Considering the facts and circumstances of the case, material available on records and on going through and averments made by the parties, it appears that the appellant's application for grant of licence has been refused on the ground that there was no specific report regarding threat to his life and property in the police report. It appears that the learned D.M. is not correct in holding that there is no threat of security and safety to the appellant. It is also seen that the finding arrived at by the licencing authority was solely based on the report of S.P. Saran rather than his own conviction. In fact arms licence are normally issued by the licencing authority on his subjective satisfaction and the said satisfaction is based on consideration of all the material facts and documents placed before him during consideration of the case. The appellants claim is that he being in the business of Jewellery, dealing with, diamond, Gold and silver and in connection with that he has to carry huge money, he apprehends constant threat of loot and robbery from antisocial elements but the licencing authority without considering these facts refused to grant him licence. Thus, it appears that appellant's case falls under special category in view of his business as such his case needs objective consideration. However, from the impugned order of D.M. Saran, it appears that he has not considered the case of the appellant by appreciating the circumstances of the case rather he refused to grant licence most casually on the same reasons on which most of the arms licence applications have been refused. In fact, the appellants case needs reconsideration at the level of licencing authority in view of his constant apprehension of insecurity to the life and property and also for the reason of his jewellery business.

For the aforementioned reasons, the impugned order of D.M. Saran is not sustainable and hence the same is set aside and the case is remitted back for passing a fresh order in accordance with law after hearing the parties.

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

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.